THE DELEGATE FROM UTAH.

Speeches in the House of Representatives of the United
States, for the Admission of

HON. GEO. Q. CANNON

TO THE SEAT IN CONGRESS,

TO WHICH HE HAD BEEN ELECTED BY A VOTE
OF 18,568 AGAINST 1,357.

U.S. 47th Cong., 1st sess., 1881-1882

SALT LAKE CITY, UTAH.
DESERET NEWS COMPANY, PRINTERS AND PUBLISHERS.
1882.

THE DELEGATE FROM UTAH.

SPEECHES IN THE HOUSE OF REPRESENTATIVES.

The following speeches were delivered in the House of Representatives of the United States, on the 19th and 20th of April, 1882. They form a gallant defense of constitutional principles in the face of a determined attempt on the part of the majority to trample upon the votes of more than eighteen thousand citizens, for the purpose of pandering to the passions of uninformed people, aroused by the misrepresentations of designing persons. These speeches are produced in this form that they may be preserved and presented to the public, and that the names of those honorable gentlemen who were not afraid to speak out for the right, in the face of general prejudice and an organized conspiracy, may be held up to the admiration and respect of all who honor integrity and esteem the champions of justice, freedom and equality before the law.

MR. DAVIS, OF MISSOURI.

Mr. Speaker—I must acknowledge that I feel somewhat reluctant to discuss this question, from the fact it is calculated to place one in a wrong light, and in the next place because I do not suppose anybody wishes to hear me talk about this or any other question.

It is admitted on all hands that Mr. Cannon received a majority of the votes, and that he possesses all the qualifications of any Delegate who sits on this floor, or of any Representative from any State; but it is held that he should not retain a seat in this House, and this House has the right to exclude him upon the ground that he is a polygamist. I shall limit myself to two points made by members who constitute a portion of the majority of the committee. One by the gentleman from Tennessee [Mr. Pettibone], and the other by the gentleman from Indiana [Mr. Calkins].

The gentleman from Tennessee grounds his whole argument upon Section 2 of Article I of the Constitution of the United States; which declares that the House of Representatives shall be composed of members chosen every two years by the people of the United States. He holds this clearly and explicitly points out who shall be the members of this House; that the statement by the Constitution of who shall be members of the House is the exclusion of all others, and that neither Congress nor any other power or authority can change this character of this House. In other words, that no power can say that a man can be a member of this House who is not a Representative from a State; that the Constitution has fixed the membership of this House, and the power to preserve its integrity of membership resides in it and nowhere else.

Now, there is much force in that position, and it demands from us serious consideration. In the interpretation of law or a provision of the Constitution we must look to the intention, the purpose or object it purposes to subserve. In order, therefore, to understand this section upon which the gentleman from Tennessee relies we must take it in connection with the section immediately preceding it, Section 1 of Article I, which declares that—

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Here, then, is a grant. Of what? All the legislative power of this government. Where is it lodged? In a Senate and House of Representatives. So, then, this House is one of the bodies in which is lodged all the legislative power of this government. Then what is the meaning of the section which immediately follows it? Evidently the meaning is to simply point out who shall exercise this grant of legislative power; who shall be the legislators of this House. That is all it means and nothing more; that this branch of the legislative department of this government for legislative purposes shall be composed only of members chosen by the people of the several States. And this is right, because this government is a union of States, and no one outside of them should be permitted to participate in its legislation.

But we have another class of members of this House who are not legislators, the Delegates from the Territories. By what authority are they here? Clause two of Section 3 of Article IV of the Constitution says:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory other property belonging to the United States, etc.

Remember, it says all "needful" rules and regulations. Who shall be the judge of what is needful? Clearly the power authorized to make the rules and regulations—the Congress of the United States. So then we have a provision of the Constitution authorizing Congress to make all needful rules and regulations for the Territories, and constituting it the judge of what shall be the needful rules and regulations. Now, what has been the policy and legislation of this government under this provision of the Constitution?

Why, from the very foundation of the government Congress has granted territorial representation. It has decided it is needful; it has decided it is right and proper that the Territories should be represented in this House. Is that an unconstitutional exercise of power? Clearly not. So then these Delegates are here in accordance with laws constitutionally made by Congress, and this House has no right to deny the right of territorial representation, because Congress has declared under the Constitution that the Territories shall be represented, and this House cannot disregard the law of Congress.

So we have two distinct classes of members of this House, under two distinct provisions of the Constitution of the United States. Some gentlemen make the mistake of supposing that because a Delegate is not a member of the House under Section 2 of Article I of the Constitution, with the right to vote, that he has no right all, and that he and therefore his Territory can be ignored. I say this cannot be done without a violation of laws passed in accordance with another provision of the Constitution, and all the Constitution must be permitted to stand and not one section to the exclusion of another. But there is no conflict between these sections; one merely provides that all the legislative power of this House shall be exclusively within the hands and province of the Representatives of the States, and the other simply authorizes Congress to enact laws giving representation to the people of a Territory who are not people of a State, and whose representative has no right to vote, and of course no right to shape our legislation.

As I have stated, Section 2 of Article I simply points out who shall be the legislators of this House; that is all it means and nothing more. Wherein does the representation of the Territory conflict with this exclusive prerogative of the representatives of the people of the States? Wherein does the office of Delegate impinge upon this peculiar constitutional composition of the House? In no possible way, because the Delegate has no vote, and of course no power to shape legislation. The legislative composition of this House remains undisturbed. No violence is done to the Constitution. On the contrary, all the provisions are carried out in their fullest and freest sense. So I say this House has not the high-handed arbitrary power claimed in this case, that when a duly elected Delegate from a regularly organized Territory is sent to this House, he enters not by the grace of the House, but by the section of law passed by Congress in the constitutional discharge of its duties, which law this House has no right to disregard.

This brings me to the second point in the report of the majority of the committee; that is, that Congress has no power to fix the qualifications of a Delegate. The report admits that Congress can create the office of Delegate, but that it cannot fix his qualifications; that Congress can create an office, but cannot say who shall fill it; under the Constitution, Congress can make all needful rules and regulations for the Territories; shall be the judge of what are needful rules and regulations, and under that may create the office of Delegate, but cannot say that he shall have the same qualifications as a Representative from a State. The statement of this proposition is its own refutation. But let us test it by what Congress has already done.

As has been read by the gentleman from Wisconsin [Mr. Hazelton], section 1906 prescribes the qualification of citizenship for certain Delegates. Now, if it can fix the qualification of citizenship, can it not fix other qualifications? Can it not say that he shall have the same qualifications as a Representative from a State? Without discussing that point further I shall ask the question which naturally follows, and it is this: has Congress fixed the qualification of a Delegate? I say it has. It is not necessary to discuss the question as to whether the Constitution as such extends over a Territory, or as to whether Congress has the power to extend the Constitution as such over a Territory, because it is absolutely certain that it has the power to make and has made the Constitution a part of the statutory law of the Territory of Utah. Section 17 of the act of 1850, organizing that Territory, declares—

> That the Constitution and all the laws of the United States are hereby declared to be in force in and extend over the Territory of Utah so far as the same are or any of their provisions may be applicable.

And what could be more applicable than that provision defining the qualifications of members of this House? But the majority report says that this will prove too much; that if you hold to the position that the Constitution in its provisions and its spirit extends over a Territory, then you cannot deny a Delegate a vote. That does seem to me to be very strange doctrine, and I think no man on second thought will hold that the extension of the Constitution over a Territory as its statutory law thereby destroys or impairs any of the provisions of the Constitution. The Constitution has fixed where the legislative power of this House resides, and that it is exclusively within the hands of the Representatives of the people of the States, but a Delegate is not a Representative from a State, and hence has no power to vote and no authority to act as a legislator.

But it may be said that these qualifications prescribed in the Constitution apply in terms and words to Representatives from States. That is true. But the Constitution of the United States also says that no State shall pass any *ex post facto* law, or any law impairing the obligation of a contract. That applies in express terms to a State, and yet I suppose no man will say that a Territorial Legislature could pass an *ex post facto* law impairing the obligation of a contract. And why? Because it would violate the spirit and principles of the Constitution, which has been made the law of the Territory. In a word, all the provisions and all the principles of the Constitution are the laws of the Territory as far as they may be applicable. And I ask the question again, what can be more applicable than that provision which says that a member of this House shall be twenty-five years old, seven years a citizen of the United States, and an inhabitant of the State in which he is chosen? It is just as if the law said to a Territory, you may be represented in this House by a man twenty-five years old, seven years a citizen of the United States, and an inhabitant of the Territory in which he is chosen. And when Congress has said that, that ends the matter, and this House has no right to add to or take from these qualifications prescribed by Congress.

But it is claimed, as I have said, that Congress cannot fix the qualifications of a Delegate. If that is true, then certainly this House cannot fix his qualifications, because that would be an act of legislation, and the power of legislation does not reside in this House alone, but in both houses of Congress. But let us look at this in another light. Section 1906 prescribes, as I have said, the qualification of citizenship for certain Delegates. Now suppose that to be the only qualification prescribed, would this House have the right to add to or take from that qualification? Certainly not; because that would be altering or amending a law, an act of legislation, the power to do which does not rest in this House alone, but in the Congress of the United States.

If what I have said is true, if the argument I have attempted to make has any foundation, Mr. Cannon was entitled to his seat when this House met, and he has been kept out only by the arbitrary power of this House. But it is claimed that section 8 of the act of 1882 will deprive him of the right to hold this office. That section says that no polygamist, bigamist, or person cohabiting with more than one woman in any Territory shall be entitled to hold office under the United States or any Territory thereof. But I suppose that no one will say that Mr. Cannon can be denied the office until he is proven to be a polygamist, a bigamist, or to have cohabited with more than one woman. In other words, under this law bigamy or polygamy is a disqualification for holding office. But I contend that you must prove that the disqualification attaches to the particular person before you can deny that particular person the office. But it is said that Cannon acknowledged that he had plural wives and was living with them. All right. When was that done? One year ago. But I say you cannot apply this law unless you prove that he has been guilty of bigamy or polygamy since the passage of this act of 1882. Why is that so? Because, under the law of 1862, defining bigamy the punishment was simply fine and imprisonment.

The disqualification of holding office was not a part of the punishment prescribed by that act of 1862. You therefore cannot apply in this case the law of 1862. Why not? Because it would be adding a new punishment to an old offence; because it would be inflicting a greater punishment than was annexed to the crime when it was committed. Because it would be inflicting a different punishment from that prescribed by the law in force when the offence was committed. And the Supreme Court of the United States has held such action unconstitutional. You cannot therefore make this law operate in an unconstitutional way. It must apply to the future and not to the past.

Mr. RANNEY—Where has the Supreme Court decided that?

Mr. DAVIS, of Missouri—In 4 Wallace, United States Reports. But I understood the statute of 1862 says that a man who, having a wife living, shall, in a Territory, marry another woman, shall be deemed guilty of bigamy. In other words, the living with plural wives is not of itself an offence under that statute. He must have married after its enactment and had another wife living.

I say there was no testimony before the committee, there is no testimony before this House, as to when these plural marriages took place. We are therefore unable to decide whether they took place before or after the law was enacted. What then has bigamy to do with this case? Absolutely nothing.

I may say, that I wish this penalty could be applied to this particular case, but you cannot get my consent to do it in an improper way. I may say that I would like to have it applied now, so that these people may understand once for all that this thing shall cease.

But you ask me to deny representation to a Territory when it has sent a man here who has all the qualifications of any other Representative or Delegate, and who is under no disqualification, as I understand the law. You ask me to do this in violation of law, in violation of all precedent, in violation of all parity of reasoning, and under circumstances in which you would not dare to deny a Representative from a State a seat in this House. I cannot do it.

I know there has been an attempt to make capital out of this matter. I know we have been told that the people are in favor of ridding the country of this incubus. That is all very true. We are told that it is the will of the people that some action shall be taken in this matter; and we have already taken action in the law that we passed a few days ago. But when I am asked to consult the will of the people of this country, I must answer that I find their will expressed in their written Constitution and in their written laws, and my allegiance shall be to them until they are changed.

That is all, Mr. Speaker, that I desire to say at this time. I will reserve the remainder of my time until further along in the debate.

MR. HOUSE.

Mr. Speaker—a decent respect to the opinions of mankind requires that the House of Representatives of the Forty-seventh Congress should at least pause and reflect before it adopts the course suggested and recommended by a majority of the Committee on Elections in this case. A continuous and unbroken line of precedents from the foundation of the government, and preserved intact amid all the mutations of parties should not be disregarded without some grave and weighty reason.

The newly awakened conscience which calls upon us to discard precedents venerable for their antiquity, and so recently and so frequently admitted and followed by this House, may on examination be found to draw its inspiration from some other source than a determination to be just and fear not. A deliberative body like this House cannot lightly ignore its own action and throw contempt on its own deliberately established precedents and reasonably expect to preserve the respect of mankind or meet the approbation of a just and enlightened public opinion.

This is not the first time that George Q. Cannon has applied to the House of Representatives to be admitted as a Delegate from the Territory of Utah. This very same man, holding the very same principles he now holds, elected by the same people he now seeks to represent, came to the Forty-third Congress and claimed the right to be admitted as a Delegate. His seat was earnestly and ably contested, and the very point on which it is now sought to exclude him, to wit, his polygamy, was pressed upon the consideration of the committee and the House. Yet after a most thorough investigation of the case, he was deliberately allowed to take his seat by a House composed of an overwhelming majority of Republican members. Again, Mr. Cannon applied to the Forty-fourth Congress to be admitted as a Delegate. His seat was again contested, and the same point as to his polygamy was again made against him. But the Forty-fourth Congress, composed of a large majority of Democratic members, after a thorough examination of the points in his case, likewise decided in his favor, and he again took his seat in this hall as the duly elected and legally qualified Delegate from Utah. He came again to the Forty-fifth Congress as the duly accredited Delegate from Utah, and the seat was accorded him. Again he came as a Delegate to the Forty-sixth Congress, and was allowed to take his seat. Thus for four consecutive terms, with the approbation of both political parties, after a thorough examination of all the points now urged against him, this identical man has been allowed to sit upon this floor as the representative of his people.

With an unquestioned and unquestionable majority of 17,211 votes he represents himself to the Forty-seventh Congress and again asks that he be permitted to represent his people here. But we are told in effect that although he may have been good enough to sit as a Delegate in four previous Congresses, the Forty-seventh Congress has so far progressed in piety or ability, or both, or neither, that he is altogether an unfit person to take his seat here among the fastidious members that compose the present House of Representatives. I can understand how a little cheap and ephemeral political capital may be made in this way by utilizing an aroused public sentiment against polygamy, but I cannot comprehend how this House can feel that it is obeying the dictates of justice or law or precedent by adopting the course suggested by a majority of the committee. The committee seem determind to carry out the cue that was given by or given to the governor of Utah. Cannon was denied a certificate of election by the governor, who, unable in the face of the conspicuous and indisputable fact that Cannon had been elected by a vote of nearly twenty to one over his competitor, Mr. Murray organized himself into a judicial tribunal, decided that Cannon was not a naturalized citizen of the United States, that Campbell was a citizen, and gave the certificate of election to Campbell.

Now the governor, while he wore the ermine and figured in the judicial instead of the executive branch of the government, might have correctly decided, so far as I know, that Campbell was a citizen of the United States, but how he ever brought his judicial mind to the conclusion that Campbell had been elected, and thus moved his executive mind to give him a certificate of election, is what no one ought to be expected to understand who is not able to combine within himself the judicial and executive abilities of the remarkable public functionary appointed by the President governor of Utah, and appointed by himself a special judge to pass on the questions of naturalization and polygamy as they presented themselves to his dual mind in Cannon's case. The committee, in their report, reverse his honor on the naturalization question, and hold that his excellency slightly erred in giving a certificate of election to a man who only missed an election by a failure to get the votes of the people he aspired to represent. But they affirm the court on the polygamy question. The error of his honor in deciding that Cannon was not naturalized, and of his excellency in refusing him a certificate of election, has so far kept Cannon out of a seat to which, under the law, he was as much entitled as any member upon this floor, and his exclusion is to be made final if the House should adopt the resolution proposed by the majority of the committee.

As before intimated, the committee admit that Cannon is a naturalized citizen of the United States, and that he was duly and legally elected a Delegate to represent the Territory of Utah in the present Congress. They also admit that he possesses all the qualifications which the Constitution of the United States prescribes for a member of Congress. One would very naturally conclude after these admissions that the committee would find no obstacle and raise no objection to the admission of Cannon to his seat. But such is found not to be the fact on an examination of the extraordinary report which the majority have submitted to the House. They take the ground that Cannon is not a member of the House, but merely a territorial agent, whom the House may admit to his seat or not, as they see fit. They insist that Congress has never prescribed the qualifications of a Delegate from a Territory, and that they have no right to pass a law defining such qualifications, and that no law can be passed in reference to such qualifications, which this House could not disregard at will.

Now let us inquire, in the first place, whether Congress has ever by law prescribed the qualifications of a Territorial Delegate.

The Constitution of the United States provides that—

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.

Laboring under the impression that this clause of the Constitution empowered them to do so, Congress at an early day passed the following law, which has remained unchanged and unchallenged upon the statute book ever since:

> Every Territory shall have the right to send a Delegate to the House of Representatives of the United States to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the Legislative Assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating but not of voting.

In the organic law for the Territory of Utah Congress enacts—

> That the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable.

Now, among the provisions of the Constitution thus extended by statute over Utah, we find the qualifications of Representatives or members of Congress prescribed: they shall be twenty-five years of age, seven years citizens of the United States, and shall be, when elected, inhabitants of the State in which they are chosen. But it is said that these qualifications are not applicable to a Delegate. Why not? True, he is not a member with full powers, as he cannot vote, but in all other respects he is a member. He receives the same salary as a member, has a right to introduce measures of legislation as member, is appointed by the Speaker of the House on committees to shape legislation as members are, the oath administered to a Delegate is the same as that administered to a member. The time, manner and places of electing Delegates are the same as those prescribed for members. Vacancies in the cases of Delegates are filled in the same way as those occurring in the cases of members, a contest arises, the case of a Delegate is treated precisely as that of a member, and the analogies between the two are fully recognized by law, by the rules of the House and its uniform practice. Without a recognition of this analogy the case now under consideration could not have found its way under the rules of the House to the Committee on Elections.

The rule provides that subjects relating to the election of members shall be referred to the Committee on Elections. The rule makes no mention of a Delegate at all. How then did this case get before the Committee on Elections? Clearly by a recognition of the analogy between a member and a Delegate; and the Committee, by the attempt to deny this analogy, repudiate the only source of jurisdiction they have to touch the case at all. If the provisions of the Constitution relative to members are not to be extended by analogy to Delegates, then the House has no power whatever to judge of the election or qualifications of a Delegate; nor has it any right to expel him, for all these rights refer to members only. Now it will not do to derive the power to judge of the election of a Delegate, to expel him, or to examine his case by a committee of the House from the analogy between a Delegate and a member, and yet deny the applicability of that analogy when the qualifications of the former are to be passed upon. No reason is given or can be given, or is attempted to be given, why Congress did not mean by extending the Constitution of the United States over Utah to make the qualifications of a Delegate from that Territory the same as those of a member by the close analogy between the two. If it had been intended to prescribe a higher standard of morality for a Delegate than for a member, surely that intention would crop out somewhere in the legislation relative to the Territories.

If any reason exists for requiring a higher degree of qualification for a Delegate than for a member, surely the committee in search of reasons to deny Cannon his seat would have discovered it and given us the benefit of it in their report, which, it must be confessed, in not at all crowded with either logic or law to sustain the positions assumed. But it is said the election of a Delegate is not provided for by the Constitution. But such election is provided for by an act of Congress, which is as binding upon this House as the Constitution is. Congress has the power to pass all needful rules and regulations for the Territories. In the language of the Supreme Court of the United States—

> The organic law of a Territory takes the place of a constitution or the fundamental law of the local government.

And again:

> It [Congress] may do for the Territories what the people under the Constitution of the United States may do for the States.

The chairman of the committee who submitted the majority report says:

> * * * Delegates are creatures of statute, and it would be competent at any time for the legislative branch to abolish the office altogether.

Suppose this is true, it does not follow that one branch of Congress can abolish the office, or which amounts practically to the same thing, nullify the law by arbitrarily refusing, as it is claimed the House has a right to do, to allow the Delegate duly elected under the law to take his seat. But says the chairman of the committee further:

> The writer of this report goes further than that. He holds that it is incompetent for Congress and the Executive to impose on any future House the right of Delegates to seats with defined qualifications; that is to say, when the several laws were passed giving the Territories the right to this limited representation, those laws were only binding on the lower House, which permitted them to be, or made it possible for them to be passed, and were persuasive only to the Houses of future Congresses.

Then they were not laws. For if they are laws I fail to see how they are binding on the House that assisted in passing them and "persuasive only to the House and future Congresses." It seems to me a new rule in the interpretation of statutes to hold that the lower House of Congress is bound by a law because it participated in its passage, but a future House that had no hand in making the law, and did not therefore assent to it, is only bound by it in so far as it chooses to be.

And again the chairman says in his report:

> And with reference to the election of Delegates who (if they hold any office or franchise at all) can be nothing but agents representing the common

property and territory of all the people, it operates only on the lower branch of Congress, for their election extends no right to them to interfere with the business of the Senate or to act as members thereof.

That is true. The election of a Delegate does not extend to him the right to interfere with the business of the Senate or to act as a member thereof. Neither does the election of a member of the House extend to him the right to interfere with the business of the Senate or to act as a member thereof, but what this proves or is intended to prove on the point in hand by the author of the report I do not know that I perceive. If it is meant to assert that a Delegate cannot have anything to do with the proceedings in the Senate, and that therefore the Senate should have nothing to do with fixing his qualifications, I fail to see the force of it. For, although the Delegate takes his seat in the House alone, he represents, as the report says, "the common property and territory of all the people," and it would seem that as the Senate as well as the House is clothed by the Constitution with the power to pass all needful rules and regulations respecting this common property and territory of all the people, I do not see the impropriety in allowing the Senate a voice in prescribing the qualifications of the agent to represent this common interest. So far as the constitutional power is concerned, it is extended to Congress, not to the House, and why it is competent for the Senate and Executive to have a voice in saying that a Territory shall have the right to elect a Delegate and to provide the manner in which he shall be elected, and yet be excluded from all participation in prescribing or defining the qualifications of the agent who is to represent the common property and Territory, I must confess my inability to see. I am unable to extract any reason for such a position from the report, though I do not feel certain that the author of the report does not labor under the impression that he has furnished one. I quote again from the report:

> This must not be construed into an opinion that the writer holds that the House of Representatives may disregard any law, which Congress has the constitutional power to pass. Such laws are as binding upon this House as upon any citizen or court. Nor does the writer of this report mean to be understood that it is not competent for Congress to provide, under the Constitution, for legislative representation of Territories; but it is denied that Congress can bind the House by any law respecting the qualification of a Delegate. It cannot affix a qualification by law for a Delegate and bind any House except the one assenting thereto. The qualification of members is fixed by the Constitution. Hence they may not be added to or taken from by law. But as to Delegates, they are not constitutional officers. Their qualification depends entirely upon such a standard as the body to which they are attached may make. It is urged this means a legal qualification. This is admitted, but that legal qualification is remitted to the body to which the Delegate is attached, because it is the sole judge of that requisition.

Now, I have always understood a legal qualification to mean a qualification fixed and regulated by law. But here we have a "legal" qualification prescribed by no law, and the right to pass any law fixing such a qualification absolutely denied.

MR. CALKINS. If the gentleman from Tennessee will allow me to interrupt him, I would remark that he seems to confuse two substantive propositions which I have blended into one. He will see, and so will anybody that will look, that there are two classes of qualifications mentioned in the Constitution. The qualifications of one class are those prescribed, which every member must possess at the time he is elected. The qualifications, or rather disqualifications, of the other class are such as may attach to the member after being elected, on account of which disqualifications he may be expelled; so that in dealing with a Delegate, excluding him from the constitutional provisions and remitting him, if you please, to the general parliamentary law, which gives to every legislative body the right to judge of the qualifications of its own members, the question of his legal qualification is remitted to the body to which the Delegate is attached, which always has had the power residing in every Legislature of prescribing the qualifications of its own members, a power which it cannot divide with any other.

MR. HAMMOND, of Georgia. Does the gentleman base that proposition on the right to expel a member?

MR. HOUSE. I understand the idea of the gentleman from Indiana. I understand that the qualification a member must possess under the Constitution that the gentleman denies Congress has the right to prescribe to a Delegate.

MR. HAMMOND, of Georgia. Will the gentleman from Tennessee allow the gentleman from Indiana to answer my question—whether he put that proposition on the right to expel a member?

MR. CALKINS. No, sir; I put it on this basis——

MR. MAMMOND, of Georgia. You used the word "expel."

MR. CALKINS. I did, in my remarks just now. I put it on this ground, that the legislative body has the sole and exclusive right to judge of the qualifications of its members and where it is unfettered by constitutional restrictions, as I claim this body is with reference to Delegates, the two classes of qualifications which are recognized in the Constitution are consolidated in the House, and the House being relieved from that restriction which requires a two-thirds vote to expel for any cause, may exclude by a majority vote.

MR. HOUSE. I will go on. I am perfectly willing the gentleman from Indiana should have an opporunity to make his explanation. I do not think I have done his argument any injustice, nor do I see his explanation has helped his argument at all. I quote further from the report.

> It [meaning the House] is unfettered by constitutional restrictions and cannot yield any part of this prerogative to the other branch of Congress or the Executive. If it could, the right to amend would follow, and the House might find itself in the awkward position of having the Senate fixing qualifications to Delegates, or the Executive vetoing laws fixing them, and by this means the power which by the Constitution resides alone in the House would be entirely abrogated.

Mr. Speaker, I stand silent in the presence of this logic and this law. The coolness with which this report assumes the very point in dispute and the dogmatic manner in which the objections are disposed of are really refreshing. But as a matter of curiosity I would like to enquire what power is alluded to as residing under the Constitution alone in the House, and which would be abrogated by allowing the Senate and the Executive to have a voice in passing a law fixing the qualifications of Delegates? Certainly not the power vested in the House by the Constitution to judge of the election, returns, and qualifications of its own members, for the report expressly takes the ground that this clause of the Constitution has no reference whatever to a Territorial Delegate, and as this clause of the Constitution is not referred to by the report, I am utterly at a loss to conjecture what constitutional right of the House would be abrogated by the passage of the law alluded to. In fact, in the report it is claimed that the House is wholly unfettered by any constitutional restrictions in dealing with a Delegate, and yet it is asserted that if the Senate and Executive are allowed to have any voice in prescribing the qualifications of a Delegate, a constitutional power which resides alone in the House would be abrogated. I give it up. I am unable to comprehend the logic of the report; it may be my misfortune and not the fault of the author.

The position assumed in the majority report, so far as I am able to gather it, is, to state it briefly, that Congress has the right under the Constitution to pass a law—both Houses and the Executive, of course, participating—providing that a Territory shall have a right to elect a Delegate; that when elected he shall be entitled to a seat in the House of Representatives, but that it is incompetent for them to so provide by law as to inform the people of the Territory what qualifications their Delegate must possess. Their right to elect is fixed by law by which the seat of their Delegate when elected is assured to him, yet after the people exercising this lawful right, and in strict compliance with the statute, have gone to the trouble and expense of electing a man possessing all the qualifications which the Constitution perscribes for a member of the House of Representatives, yet, when he arrives in Washington, presents his credentials, and asks to be allowed to take his seat, he is told, "We know the law gives your Territory the right to be represented by a Delegate; we know you were duly and legally elected to that position; we admit that you possess all the qualifications that the Constitution requires a member of the lower House of Congress to possess, yet you do not suit our taste, or caprice, on the standard which we have erected outside the law, and therefore we have concluded not to admit you. We claim the right to arbitrarily exclude you. We have, therefore, Mr. Delegate, proposed for the adoption of this House the following resolutions:

"*Resolved*, That George Q. Cannon is not entitled to a seat in this Congress as a Delegate from the Territory of Utah.

"*Resolved*, That the seat of Delegate from the Territory of Utah be, and the same hereby is, declared to be vacant.

"Go, tell your people that the Forty-seventh Congress is capable of taking that position, and

"If any fool should ask thee,
Why we wear the crown;
Tell him we wear the crown
Because—it fits our head."

The people of the Territory thus denied the right of representation by an open and arbitrary disregard of the law, may, at the next election, select a man that comes up to the moral standard fixed by this Congress, but the Congressional liver of the next House of Representatives may be in a torpid condition, and the new Delegate may be told that he takes his whisky straight, whereas he ought to have sugar in it; that he doesn't wear his hair or his coat cut in the proper fashion; and that taken altogether a majority of the members of the House don't like his looks at all, and don't fancy the people that elected him, anyway, and therefore they have concluded to close the doors of the House to him and declare his seat vacant. A right to representation, however loudly it may be claimed by law, is not worth much to a Delegate or his people when it can be denied by the body to which he is sent at the mere whim or caprice of its members.

Mr. Speaker, why this effort to disregard all precedent and to violate all law to keep out of his seat this Delegate from Utah who has no right to vote?

It seems that members wish to emphasize their abhorrence to polygamy by denying Cannon his seat. It strikes me that it would be much more creditable for members of Congress to emphasize their devotion to justice and their respect for law by refusing to trample either under foot, even though it might be done in obedience to a popular outcry, however well founded, against an odious practice. The right never demands of its votaries to call to their aid injustice and wrong to suppress an evil practice or an obnoxious doctrine. It may be a matter of small concern whether Mr. Cannon is allowed to take his seat in the Forty-seventh Congress; but it is not a matter of small concern for this Congress to repudiate all its precedents, violate its own laws, and perpetrate an act of injustice even against a Mormon. Polygamy cannot be crushed out in this way. Men can never be convinced of error by making them feel that they are the victims of injustice. A respect for the law of the land can never be promoted among any portion of our population by a disregard of the law on the part of law-makers themselves. This proposition to deny Cannon his seat had its beginning in the arbitrary act of the governor of Utah, who, in plain violation of the law, denied him his certificate of election. It is now proposed to crown that illegal act by a vote of this House declaring that he is not entitled to his seat, when every well-informed member of this House knows he is so entitled, unless the last four Congresses stultified themselves in admitting him.

Mr. Speaker, I cannot vote for the resolution proposed by a majority of the Committee on Elections. I cannot assent to their reasoning, accept their legal conclusions, or, surrendering my judgment to popular clamor, consent to establish a precedent so utterly untenable in itself and so dangerous in its tendencies. I cannot agree by my vote to clothe this House with arbitrary power to set the law at defiance or to trample on even the rights of a Mormon, however distasteful his doctrine on the subject of the domestic relations may be to me. I cannot avoid feeling that by such an act I had struck a much severer blow to the instincts of my manhood than I had to the pernicious doctrines of the Mormons. Several members of the Committee on Elections, of the majority side, have favored the House with written reports, undertaking to set forth their reasons for denying Cannon his seat. These reports seem to be characterized more by a feeling of passion and indignation than by that calm judicious tone which should prevade such opinions given to this House for their guidance. My colleague [Mr. Pendleton], in the conclusion of the report which he submits, uses this extraordinary language:

> My vote and voice, then, is for a resolution denying to George Q. Cannon a seat as Delegate from Utah, because it is in gross violation of the dignity of the House, and would be an insult to the sovereignty of the nation to admit a self-admitted criminal violator of the laws of Congress to a seat in the body whereof we are members.

His reasons seem to be that he wishes to preserve "the dignity of the House" and the sovereignty of the nation. It is sad to reflect upon how the dignity of the House of the Forty-third, Forty-fourth, Forty-fifth and Forty-sixth Congresses was suffered to be impaired by the presence of this very man when that dignity was in the keeping of majorities of both Democratic and Republican members. What particular injury was inflicted on "the sovereignty of the nation" by Cannon during the time he held his seat in those bodies I have never seen any account of; but Cannon is stigmatized as a "self-admitted criminal violator of the laws of Congress." I fail to find in the record anything to justify this charge. I find a statement from Cannon to the effect that he belongs to the Mormon Church; that in accordance with the tenets of that Church he had taken plural wives, who live with him, and have done so for many years, and have borne him children. Now, polygamy was not made a crime, nor was there any law in Utah prohibiting it until the act of 1862 was passed, and there is no evidence whatever that Cannon has married a wife since the passage of that act. So far, then, as this record discloses, and I know nothing of Cannon's marital relations outside of the record, he is not a self-admitted violator of any law of Congress.

Mr. Speaker, I once heard of an old judge who made it a rule never to give a reason for any judgment he rendered. His theory was that if he should happen to decided a case correctly, he might give a wrong reason for it and thus impair the force of his opinion. I commend the example of the prudent old judge to the author of this report.

Another gentleman of the majority [Mr. Miller] also indulges in a separate report. The utter contempt of precedents, opinions, and decisions displayed by him compels admiration of his courage, whatever impression may be left on the mind as to his judgment. He seems to move under an intensity of excitement and a fixedness of purpose that bears down all opposition and defies all legal restraints. He evidently started on the war-path to take the scalp of polygamy and to return to an admiring constituency with this trophy dangling from his wampum belt. I quote a few lines from his report as illustrative of his animated animus:

> Whenever this hydra-headed monster of injustice, iniquity, and anti-republicanism shall threaten the peace of this nation it is quite time that Congress should assert its prerogatives; should trample down ancient precedents, if they stand in the way; should disregard the opinions of any man, however reputable, if they are quoted ever so persuasively, and call a halt on the enemy of free government. The exercise of such power is not the exercise of "brute force," as some have denominated the majority action of this committee; it is the exercise of that right which is as inherent in governments as in citizens, the right of self-defense, or self-preservation, the right and authority and duty of governments to protect their existence from all enemies, domestic as well as foreign. In doing this you may run counter of a precedent or decision or opinion that once was highly esteemed; so much the worse for the precedent.

This red-hot sample of judicial logic ought certainly to commend this report to every member of the House who seeks by its perusal to reach the merits of this case. I quote these extracts from these reports as illustrative of the temper and spirit which seem to have inspired the investigation that conducted the majority to the remarkable conclusion at which they arrived.

The very ground on which the majority claim the right to exclude Cannon, to wit, that it is a matter resting solely in the discretion of the House, and that the Senate and the Executive have no right to assist in passing any law touching the qualifications of a Delegate, was abandoned by them at the present session when they voted for a Senate bill which provided that no polygamist should have a seat in this body as a Delegate from a Territory. Of course, according to the doctrine laid down in the majority report, that section of the anti-polygamy bill passed at the present session, so far as it seeks to deal with the qualifications of a Delegate, is null and void, and not binding on the House at all. The authors of the majority report thus repudiate by their votes on that bill the very ground assumed in the report before it comes up for action in the House. They ought not to expect others to accept their position when they themselves thus repudiate at the first opportunity.

Mr. Speaker, anxious as I am to see the cancerous spot of polygamy eradicated from the body politic I felt constrained to vote against the bill passed at the present session. I did not believe that the bill would have the effect to destroy polygamy in Utah, and it contained provisions which I could not endorse. In some of its features it is more worthy of the barbarous and proscriptive spirit which made the legislation of three or four centuries ago than of the enlightened judgment and toleration of the present in the land of written constitutions and human rights. If it is determined, regardless of all considerations arising from obedience to law, respects for constitutions and human rights, to crush out polygamy, let the army be sent to Utah, and the mailed hand of military power exterminate it. But let us not pretend to give the Mormon the right of trial by jury, and then pack the jury on him to insure his conviction.

The Constitution gives to every man, whether he lives in Utah or Massachusetts, whether he is a Mormon or a Methodist, the right to a speedy trial by an impartial jury. Now, when it is provided, as it virtually is in the bill passed at this session, that none but anti-Mormons shall compose the jury for the trial of a Mormon for the crime of polygamy, the accused has not the benefit of an impartial jury to try him. But it is said if you allow Mormons to sit on a jury you can never convict one of polygamy. That may be true. But does it follow that it is therefore legitimate to substitute the packed jury of expediency for the impartial jury of the Constitution? The provisions of the law in question strike the deadliest blow at the purity and impartiality of jury trial to be found anywhere in the legislative history of this country except in the reconstruction policy adopted toward the South after the late civil war, and that policy was admitted by its ablest advocates to be outside the Constitution.

This law, if sustained by the courts, will establish a precedent which may in the future undermine the whole system of trial by jury. A packed jury is an insult to the Constitution and a travesty upon the administration of the law. It is true the law is only aimed at the Mormons, a sect living in a remote Territory of the United States with insufficient voting power to make them formidable in elections; but this does not establish either its fairness or constitutionality.

If it was proposed in the trial of a Methodist or a Baptist or a Presbyterian all persons who belonged to the same church with the accused should be excluded from the jury, a cry would be raised from one end of this country to the other that would drive the advocates of such a scheme into everlasting infamy and disgrace. The doctrine that if you cannot convict a man without packing a jury on him, it is therefore right, legal, constitutional to pack the jury may be good logic with some, but I cannot embrace it, though it be intended to apply only to the trial of a Mormon. But this is not the worst feature of this law. Section 8 of the law says that no polygamist, bigamist, or any person cohabiting with more than one woman shall be entitled to vote in any Territory or other place over which the United States have exclusive jurisdiction, or be eligible for election or appointment to, or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States. Now the inquiry arises, who is a "polygamist?"

Webster defines a polygamist to be: "One who practices polygamy or maintains the lawfulness thereof."

Johnson: "One that holds the lawfulness of more wives than one."

Worcester: "An advocate of polygamy;" and this is the first definition he gives of the word.

Craig: "One who maintains the lawfulness of polygamy."

Kenrick: "One that holds the lawfulness of more wives than one."

Ogilvie: "A person who maintains the lawfulness of polygamy."

Bailey: "One that holds the lawfulness of more wives than one at a time."

It will thus be seen from the definitions given by these eminent lexicographers that a "polygamist" is not only the man who practices polygamy, but any one who believes that polygamy is not wrong. Now, I can very well conceive how a person, from reading the Old Testament Scriptures may honestly believe that polygamy is not morally wrong, although he may never have practiced it and may have no intention of doing so. Yet for this opinion merely he is declared ineligible for election or appointment to any office, even the most insignificant. In the case of Reynolds vs. United States, 98 United States Supreme Court report, Chief Justice Waite, after quoting Mr. Jefferson, says:

> Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good.

The idea of excluding a man from holding office on account of his religous belief, whether he believe in polygamy, the transmigration of souls, the resurrrection of the dead, or believe in neither, is so palpably antagonistic to the whole spirit of our institutions and violative of the Constitution that it would be an insult to the understanding of any American citizen to attempt to argue the proposition. But the eighth section of this bill does this, and it seems to me was intended to do it. The definition of the word used not only warrants this conclusion, but the proviso to the ninth section greatly strengthens it. It is in these words:

> *Provided*, That said board of five persons shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such persons may entertain on the subject of bigamy or polygamy, nor shall they refuse to count any such vote on account of the opinion of any person casting it on the subject of bigamy or polygamy, but each house of such Assembly, after its organization, shall have power to decide upon the elections and qualifications of its members.

The authors of the law recognizing the fact that the commissioners might deny a man the right to vote on account of his opinions merely, as they would clearly have a right to do under the eighth section, saw fit to expressly provide that they should not do so, but there is no provision of this sort in reference to eligibility to hold office. On the contrary, after saying that the commissioners might allow a man to vote who believed in but did not practice polygamy, lest it might be inferred that they intended to restrict the meaning of the word "polygamist," as to elegibility to hold office, they in this immediate connection proceed to say "but" each house of the Territorial Legislature shall have power to judge of the qualifications of its members, clearly giving to them power to apply the eighth section in its full meaning to members elected to the Legislature, and to exclude a man therefrom on account of his religious belief or opinions. Not many Mormons, it is safe to assume, will ever take seats in that Legislature. But I insist further in reference to the eighth section, that it is a bill of attainder, which is prohibited by the Constitution, and is therefore beyond the power of Congress to pass even in reference to those who practice polygamy. As has been seen, it prohibits all such persons from voting or holding office.

The Supreme Court of the United States defines a bill of attainder to be "a legislative act which inflicts punishment without a judicial trial." Is it "punishment" to deprive an American citizen of the right to vote and hold office? The same court says:

> All avocations, all business, all positions are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined.

Now it seems to me that if the Supreme Court of the United States knows what a bill of attainder is, the eighth and ninth sections of this act are clearly in violation of the Constitution. When I took a seat in this House I took an oath to support the Constitution of the United States. I cannot and will not swear to a lie even to emphasize my abhorrence of polygamy or to punish a Mormon, and with my views of this act I would have had to do so if I had voted for the bill when it passed. It would seem that after organizing a packed jury to convict, the authors of the bill ought then to have been willing to await a conviction before depriving American citizens of the right to vote or hold office. For what is an American deprived of those rights? He may live in a land of boasted freedom, but thus stripped of the rights and privileges that freemen most value, he is no better than a slave.

The ninth and last section of the bill (and I will publish the bill at the end of my remarks as a part thereof) is a fitting conclusion to what preceded it. By this section all the offices in the Territory are declared vacant, and all duties relating to the registration of votes, the conduct of elections, the receiving and rejection of votes and the canvassing or returning of the same, and the issuing of certificates or other evidence of election in said Territory, are turned over to a board of five persons to be appointed by the President and confirmed by the Senate, not more than three of whom shall be members of one political party. Not more than three. That is enough. Three is a majority of five. These five commissioners are to exercise the functions of their offices until other provisions are made by the Legislative Assembly of the Territory. The canvass and return of all the votes for members of the Legislative Assembly are to be returned to these commissioners, and they are to canvass the returns and issue certificates of election. In a word, the population of that doomed Territory are placed in the hands of a returning board —a tribunal forever as infamous in American history as the star chamber in English history.

Let the carpet-bagger, expelled finally from every State in the American Union with the brand of disgrace stamped upon his brow, lift up his head once more and turn his face toward the setting sun. Utah beckons him to a new field of pillage and fresh pastures of pilfering. Let him pack his gripsack and start. The Mormons have no friends and no one will come forward to defend or protect their rights. A returning board, from whose decision there is no appeal, sent out from the American Congress baptized with the spirit of persecution and intolerance, will enter Utah to trample beneath their feet the rights of the people of that far-off and ill-fated land. Mr. Speaker, I would not place a dog under the dominion of a set of carpet-baggers, re-enforced by a returning board, unless I meant to have him robbed of his bone. A more grinding tyranny, a more absolute despotism was never established over any people.

The Mormons have been guilty of believing in, and some of them practicing, polygamy. But they have been guilty of another sin also. They have committed the offense of belonging to the democratic party. That Territory now has a population about large enough to be admitted into the Union. It would not do to let it enter the Union as a democratic State. There is not now the least danger of it. After it has passed under the manipulations of the returning board, after her people have been driven from their homes under the oppressive laws that will be passed under the powers conferred by this law, after the carpet-bagger has gone in and taken possession, Utah, clothed in the habiliments of the republican party, will be welcomed into the sisterhood of States. I did desire to notice some other features of this law, but time forbids. It was passed under the operation of the previous question, and no one had the opportunity to discuss it or to point out its imperfections. The Delegate sent here by the people of that Territory, by a barefaced usurpation on the part of the governor, was denied a certificate of election, and was not allowed to take the seat to which he had been elected, or to speak in behalf of his people while they were being robbed of their rights.

I have no faith whatever in this effort to deny Cannon his seat or in the law passed at the present session having the effect to diminish polygamy in Utah. In my opinion it would have succumbed to the logic of events and the force of public opinion. Railroads have brought the Territory in contact and communication with the people of the States. A large anti-Mormon population will at no distant day settle in the Territory, and polygamy must give way before the irresistible force of an adverse public opinion. As long as Utah remained isolated from the rest of the world polygamy was secure, but when brought into communication with the rest of the world its disappearance becomes only a question of time. You cannot legislate men's religion or opinions out of them. Acts of injustice and persecution will cause them to adhere more stubbornly to their faith.

The history of the world and of the religious persecutions that have disgraced churches and governments establish this fact beyond controversy or doubt. "The blood of the martyrs is the seed of the church" has held good in all the past, and will prove true to-day. Mr. Madison, in his letter to Edward Everett, of March 19, 1823, says upon this subject:

> The settled opinion here is that religion is essentially distinct from civil goverment and exempt from its cognizance; that if new sects arise with absurd opinions or overheated imagination, the proper remedies lie in time, forbearance and example.

There is more wisdom and true religion in these few words of the father of the Constitution than can be found in all the test acts and test oaths and religious intolerance and persecutions that have ever disgraced the human race or dyed the white robes of Christianity in blood.

MR. JONES, OF TEXAS.

Mr. Speaker—In the time allowed me I shall not be able to notice or discuss all of the many interesting questions of constitutional law involved in this debate. I shall, therefore, select such as seem to me most salient and give them such consideration as my ability and the limited time will permit.

It is not denied that Mr. Cannon was duly elected, receiving some eighteen thousand votes to about some one thousand six hundred against him. It is not questioned that these votes were legal. So that the only question before the House is whether he is laboring under any disability or disqualification on account of which he is denied or should be denied a seat on this floor. Touching this vital inquiry, I shall call attention to the qualifications established or prescribed by the Constitution for members:

> No person shall be a Representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

It is admitted in the report of the majority that Mr. Cannon possesses all of these constitutional qualifications. The rule is familiar to the House that the qualifications thus prescribed by the Constitution exclude all others; in other words these are all the qualifications that can be required for members of this House. The old familiar rule, "the inclusion of the one is the exclusion of the other," in its application to this particular section or clause of the Constitution is expressly recognized and affirmed by Mr. Story in his treatise on the Constitution. There is no question about that. It is not pretended that Congress can either add to or take from these qualifications. It is, however, or has been in this debate insisted that Congress may, in the exercise of its constitutional prerogative to judge of the elections, qualifications, and returns of its own members, apply other tests or require other qualifications in a Delegate from a Territory.

Congress has the prerogative or exclusive privilege to judge, not to enlarge or to contract or to diminish the qualifications prescribed by the Constitution. The power is clearly one of judgment, one of ascertainment, and not one of creation. The House can neither enlarge nor diminish in so far as its members are concerned. But it is maintained by some gentlemen that this constitutional provision has little or no application to a Delegate coming from a Territory. Why not? Is not the reason the same? Congress cannot certainly require greater qualifications in a Delegate, in an inferior, in one occupying a less important position upon the floor than a member. To do so would in itself be a travesty on constitutional law. You cannot erect a standard for a Delegate different from and more exacting than the one by which you propose to be ruled yourselves. It not only involves a legal sophism, but it involves self-reproach for a member of the United States Congress to stand up here and say, "I am good enough to represent my constituents, but some man hailing from a Territory is not good enough, though as good as myself, to represent his." Here in that same breath we have it that the people in the Territories are better than those in the States, when it serves your purpose; and yet the breath is not cold before you tell us that the people of the States are really better than those in the Territories, and ought to have better men to represent them in the United States Congress. And yet gentlemen attempting to maintain the sophism by which they sustain themselves in this particular case, do not get through their pretended arguments before they tell us the people in the Territories have no rights we are bound to respect.

Now, then, it being conceded that Mr. Cannon possesses all of these constitutional qualifications, let us see if he does not possess all the qualifications required by the acts of Congress in respect to the Territory of Utah.

Gentlemen tell us this is a new question, as if it were here for the first time in its original character for our consideration, and yet the very same gentlemen who tell us so go back and trace our legislation for thirty years in respect to this very Territory and this very question.

Was not this question before Congress when it passed the organic act of the Territory of Utah? And what is that organic act? Has it any binding force or effect upon the people of the United States or upon this Congress? Can you treat it in any other light than a charter government for that people? Here is an organic act; you passed it and that people accepted it. It is in the nature of a legislative contract, and is binding on all parties, and certainly repealable by neither except with the agreement and by the consent of the other.

This is no new question in American history. George III and the British Parliament thought that our fathers when they were living under colonial and chartered governments had no rights beyond their will. But Jefferson and Madison and Washington and others of our early fathers believed and maintained that men are born with inalienable rights, of which they cannot be deprived by the usurpation of their rulers.

This, then, is not a new question. It was before Congress in the act organizing the Territory of Utah; Congress incorporated into that act no disqualification as to polygamy, they recognized the fact then that there was in Congress an absolute want of power to do so. They organized the only government, in so far as this particular feature of the case is concerned, that in their judgment they had the power to organize. They recognized the people as having right to life, liberty and property.

Yet gentlemen here would tell us that they have none; that we can tax them without representation; that we can deny them representation on this floor. We are told that Delegates represent nobody here; that they amount to nothing; that they cannot vote. Granted; but have we as Americans yet to learn the potency of the right to speak, the power of the voice of a representative who speaks for his people? Do not gentlemen recognize the fact that it is the bulwark of our institutions that the people, whether of State or Territory, may bring their cause here, and if not heard, then by way of appeal they can go from Congress to the grand tribunal of the whole people of the United States? Yet you would deny them that right lest in asserting their own rights they might forsooth reproach you for their violation. Congress did not incorporate into the organic act any such provisions as are now insisted upon.

Take the Forty-third, the Forty-fourth, the Forty-fifth, and the Forty-sixth Congresses; at times republican and at times democratic. Yet the right of this people to be represented by a Mormon was recognized by all. Now, we are told that the presence of a Mormon on this floor will offend the dignity and sensibilities of certain men and women living elsewhere; hence, we must commence a crusade against Mormonism.

Gentlemen, are you in earnest in that? It is said that you may judge a tree by its fruit. Now, if you are in earnest and really want to extirpate polygamy, the way is easy and the constitutional method plain. What is that? Why, just gather together thirty or forty thousand of you and go out there and settle. They cannot hinder you from doing so, and then you can settle this question.

The Forty-third Congress had this question before it, and the Forty-fourth Congress, and the Forty-fifth and the Forty-sixth. It has passed the crucial test of all of them in a constitutional point of view, and they all decided that there was then no existing law, no such disqualification of polygamy as now contended for by gentlemen on the opposite side of this question. Congress, by acquiescing, by receiving the Delegate, is now, if there can be any such thing upon the unbridled power claimed by this Congress, estopped from interposing and exacting for the first time a qualification hitherto unknown either to the Constitution, to the law, or to precedent.

The present Congress admits that there is no question on that subject. Why hurry through in hot haste at the present Congress what is known as the Mormon bill, except to reach Mr. Cannon's case? Everybody knows that. You admit that the law and the Constitution sustained Mr. Cannon's right to a seat on this floor. And in order to overreach him you introduced this bill, known as the Mormon bill, and passed it in order to accomplish by indirect means what you could not effect directly. Now, is there a lawyer on this floor who does not know that what cannot be accomplished directly cannot be accomplished indirectly? Can you evade, and thereby defeat the Constitution of the country?

It is maintained by some gentlemen that this act of Congress changes materially the attitude of this case. It is maintained by the gentleman from Pennsylvania [Mr. Beltzhoover] that for the first time we have polygamy confessed by Mr. Cannon. Now, does not everybody know that it was just as well known by general notoriety as a thing could be known? Did Mr. Cannon ever deny it heretofore? And now because the man was too honest, too frank, to deny the truth, but came up boldly in his manhood and admitted it, did not put the country to any trouble to prove it, that is seized upon as conclusive evidence of guilt.

Now, was he guilty of any offense, any legal offense? I will inquire about that by and by. He had taken his wives before the act of 1862.

MR. BELTZHOOVER. Will the gentleman allow me to ask him a question?

MR. JONES, of Texas. Certainly.

MR. BELTZHOOVER. Has the gentleman ever read the report of the Committee on Elections of the Forty-third Congress in the Cannon and Maxwell case?

MR. JONES, of Texas. No, sir, I have not.

MR. BELTZHOOVER. Then I would suggest that the gentleman should not make the assertion that Mr. Cannon did not deny that he was a polygamist.

MR. JONES, of Texas. I say that he did not deny it then.

MR. BELTZHOOVER. He did deny it.

MR. JONES, of Texas. Denied that he ever had been married?

MR. BELTZHOOVER. In the contest which Mr. Cannon had with Mr. Maxwell, in the Forty-third Congress (1874), he denied most emphatically that he was "living with four wives or living or cohabiting with any wives in defiant or wilful violation of the law of Congress of 1862." He denied that he was then "living, or had ever lived, in violation of the laws of God, man, his country, decency, or civilization, or of any law of the United States." These broad denials on the very issue which was the chief one involved in that contest doubtless had a great deal to do with the finding in Mr. Cannon's favor.

MR. JONES, of Texas. Very well. It is now stated that the case has been materially changed, that he admits—admits what? He does not admit that he has violated any law. He does not admit that he has been convicted of any offense. The fact that he admitted it in the Territory where he was directly amenable to the law and subject to prosecution in case of guilt shows a consciousness on his part that he was not thus liable.

The fact about it is that his polygamist errors, or what ever you please to term them, all took place before the enactment of the law of 1862. Will any gentleman pretend that Mr. Cannon could, under that law, be convicted and punished for an act which, when done, was not a crime?

The gentleman from Pennsylvania [Mr.Beltzhoover] says there is nothing that Congress cannot do in its treatment of the people of the Territories. But it seems to me that on this point he has read to very little profit the decisions of the Supreme Court if he has not been informed that, with all our legislative power, we cannot, to save our lives, make a law *ex post facto* in its nature or even imparing the obligation of contracts. In the celebrated case of Hepburn vs. Griswold, involving the legal-tender question—a case with which the members of the bar are all familiar—the Chief Justice, delivering the opinion of the court, grouped not the powers of the Government in order to show that it could do thus and so, but actually grouped in the inhibitions by the Constitution upon the powers of the States—for what purpose? To show that by the very nature and genius of our Government *ex post facto* laws and laws impairing the obligations of contracts have no part or place in our entire system. The Federal Government cannot exercise the power to pass any such law. There is no authority, either State or national, that can by any act passed to-day make that which was done yesterday a crime.

The eighth section of the act of March 22, 1882, has been referred to. Let me read it:

> That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons aforesaid described in the section, in any Territory or other place over which the United States have exclusive juridiction, shall be entitled to vote—

That does not affect votes heretofore given—

> at any election held in any such Territory or other place—

Not heretofore but hereafter held in such Territory or other place—

> or be eligible for election or appointment to—

Not in the past but in the future—

or be entitled to hold any office or place of public trust, honor or emolument in, under, or for any such Territory or place, or under the United States.

Now, in construing this provision I submit that the general and well known rule that all statutes are to be construed so as to give them operation in the future, applies in this case. No statute can be construed as having a retroactive or *ex post facto* effect, even where there exists power in the legislative body to give it such effect, unless it be made so by express ond unmistakable language. Now, apply that rule to this eighth section, which, it is claimed, works a change in the character that this case presents to us. Under the application of this rule the whole argument falls to the ground.

But accepting this confession which this argument implies of your inability to reach this case in any other mode, let us concede that the law-makers intended to do just what you claim has been done—to reach Mr. Cannon and impose upon him a disqualification on account of polygamy; can you do it? Have you done it? Is not the law if so construed, necessarily *ex post facto?* Was Mr. Cannon duly elected to this Congress? Did he not acquire by virtue of his election a vested right of property in his office? Can you deprive him of it, except by due process of law? Is it true, as you affirm, that the people residing in the Territories have no protection whatever? Is it true, as you affirm, that the ægis of American liberty does not cover those poor, helpless people out there? Is it true, as you maintain, that when a man, invested in his own State with all the rights of American citizenship, happens to transcend the territorial borders of the State sovereignty, he loses his stature as a man and forfeits his rights as an American citizen? Why, sir, this idea reverses the whole theory of our government Our fathers thought that governments were organized to conserve and protect the innate, inherent rights of man; yet you reverse that principle, and in these halls, familiar in the past with the teachings of Douglas and Clay, and other illustrious men, you gravely tell us that the people of the Territories have no rights whatever that we are bound to respect. Why, gentlemen, we are retrograding; we have got away back of 1765.

My friend from Pennsylvania [Mr. Beltzhoover] had better go a little behind the history that he read, when he undertakes to deny these people the right of representation. He could even go to English Parliament and get valuable lessons from the Earl of Camden. When the same power was claimed for the British Parliament over the American colonies, what was the response of that noble lord? He maintained that whatever is a man's own is his own absolutely, and no one has a right to take it from him without his consent; whoever attempts to do so does him an injury; whoever does so commits a robbery. Whenever you undertake to deprive the people of Utah of the right of representation, of the right of a voice in their own legislation, however wayward they may be, you do those people an injury, and if successful you rob them, not of rights which you gave them, but of rights which they received from nature and nature's God.

Now, then, if Mr. Cannon was elected, and that is the main point I wish to impress upon this House, he is entitled to his seat. He has not been, as I maintain, and I think the intendment of the section clear in support of that view, deprived of it by this act of Congress. If the act had so intended, it is unconstitutional, and therefore inoperative. He is not in any view of its construction, deprived of his right, and the logical conclusion is that he cannot be excluded without abolishing the office of Delegate from that Territory, I say, then, to gentlemen on the other side of this House, in all fairness, let them meet this question as it confronts them. Let them meet this question fairly. Here it is: Mr. Cannon is supported by his constitutional right, by his legal right. You find the Constitution and laws of your country and his country, however widely they differ in your religious views, are the same. You find them confronting you. They stand between you and him. They are opposed to you. The spirit of our Constitution and laws is opposed to you, to say nothing of their express language.

What are you going to do? What shall we do? This is the grave and solemn question for us to decide. Will we do as our predecessors have done, recognize this right, the right of representation in the people of the Territories, the right of Mr. Cannon to come here and voice their interests, to represent them in asserting their rights, in communicating to Congress such information as may be deemed necessary in their treatment, or will you ignore these rights?

Here you are brought in front of the Constitution itself. You cannot get around it and you cannot get over it. There is no escape. There is but one alternative: you must either admit Cannon or you must trample the Constitution of your country under your feet.

I do not propose at this time to undertake to discuss, or even to state the constitutional questions involved as affecting the rights of the people in a Territory. It is not a new question. I accept as true that construction of the second clause of the third section of the fourth article of the Constitution in reference to the power of Congress over the Territories, as stated by the gentleman from Pennsylvannia, [Mr. Beltzhoover]. Under the clause of the Constitution, Congress has the power to do what? To dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.

I submit to any fair-minded man whether both the legal and grammatical intendment of this language is not unmistakable. Does not the qualifying word "other" in its relation to the subject place Territory in the same category with property? I submit that the plain intendment of the language, the word "other" referring back to territory, puts it in juxtaposition with property.

I will not now repeat what to my mind has been the unanswerable argument of Case and Douglas on this question. I desire to affirm that I believe, as they maintained, that the power here given is limited to property as land in the Territories. At the time the Constitution was adopted the territorial government had already been provided for the Northwest Territory. The first Congress under the Constitution of the United States passed an act confirming the territorial government in its relation to the new government, succeeding and supplanting the old. That is all it did. They elected and sent their Representative to Congress; they chose their Representatives and lawmakers under it. Here we have, then, I may say, taking it in its historical relation and bearing, a direct expression of the sense of those who framed the Constitution.

The history of their struggle with British power was too fresh in the minds of our fathers for them to assume that the people who inhabited the Territories had no rights. They recognized in their brothers residing in a Territory the same capability, the same right to treat, regulate, and control their own affairs that they had so recently asserted for themselves. That is part and parcel; as it were, of the Constitution itself. The clause "to make all needful rules and regulations," etc., to which I have just referred, was intended to and did give Congress power to establish a system of land surveys, to dispose of and regulated the sale of public lands. At that time it might be reasonably supposed Congress was not looking to the acquisition of further territory, but Congress was empowered by the Constitution to make treaties and declare war, and under the power to make treaties Congress could acquire territory—this very Territory of Utah. In the execution of that power it did acquire this Territory.

The force of analogy and the example of the framers of the Constitution can leave but little room for doubt as to relations of rights and powers between the government and the Territories. Conforming to those relations as interpreted by analogy and example, Congress organized a territorial government, securing to the people the right of local self-government. The rights of the people in that Territory were recognized, as were those of the people in the Northwest Territory, thus conforming to the genius of our government. The people accepted the government thus provided, and by accepting, made it their own. If I had time, Mr. Speaker, I would like to reproduce some of the Fourth of July orations I have read on this great subject. Why, I have been so weak, and credulous as actually to believe that all just laws derive their sanctions from the consent of the governed. I have been so weak and credulous as an American citizen. In fact, I used to pride myself in the genious of our institutions and in the faith that such was American doctrine and such the spirit of our Constitution and our laws.

I used to believe in the doctrine that all men are born with certain inalienable rights, but especially so with reference to the one to which I have referred; but I now find that I have been hugging delusive phantoms; that man has no rights except those conferred by the government, and that Congress has absolute power over the domestic affairs of the hardy frontiersmen in the Territories, and the right to establish for them such a system as shall suit the people in the States, without regard to the will and welfare of the governed, give them bad names, call them polygamists, and try them in their absence and condemn them without a hearing. Is such the genius of American institutions? Is that American doctrine? "Oh," say gentlemen, "it won't do to let this despised people alone." James Madison was a lunatic when he said that time, forbearance, and examples will do the work and correct the evil. Polk and Jackson and Jefferson and Madison and Clay and Webster were all beside themselves and should have been sent to lunatic asylums when they maintained that the second sober thought of the people would correct all political evils. Why, all of our forefathers were madmen when they laid the foundation of the government upon the broad principle of the right of the people and upon the basis of the virtue, intelligence, and patriotism of the masses; that the people might be safely trusted with the settlement of all these political questions, and that the evils which would probably spring up could be corrected by the virtue and intelligence of the people themselves.

But, Mr. Speaker, gentlemen say we cannot trust the virtue and intelligence of the people in Utah. Well, then, whom can we trust, and to whom shall we entrust the government? What power shall we invoke above that of the people themselves? It is said they have no rights. Whence do we get power to govern them at will and without restraint? It is proposed, as I have already stated, to legislate for them, and yet we are not responsible to them for the abuse of power. Separate responsibility and power and right is a myth and liberty a name. In this very case we have more concern to please our constituents than to promote the welfare of the people in Utah. In response to whose demands are we now pressing to a vote the unseating of Mr. Cannon? Is it done to help or benefit the people of Utah? Or is it done to respond to the demands of our constituents, far removed from the influence of our action, and not affected by the consequences which you propose to impose upon others?

There are wrongs in Utah as there are in all other Territories; but it is tyranny for us to make laws that do not affect ourselves or our constituents, and for which we are wholly irresponsible to the people on whom they act, however oppressively they may be affected by them. I may be what some people call an old fogy on these questions, but I have never forgotten the teachings of the fathers of the Republic. It may not be fashionable to remember them now. I know that other views and other opinions are current upon these questions, but when I turn to the Constitution what do I find? I find that our fathers (and that Constitution embodies their wisdom and experience), taught by the cruel persecution of witches, crucified by the persecutions of Catholics and Protestants alike, taught by all those bitter experiences, declared that religion should have no place in our Constitution, lest hypocrisy should thereby find pretence for outrage and wrong upon the innocent.

I find no power in the Constitution that warrants gentlemen in taking the position that we must to the rescue of the Christian religion and stamp out Mormonism, lest its virus contaminate the Christian world. The Christian religion is distinguished from all others by the fact that it does not ask or require the help of temporal aid, but addresses itself directly to the head and heart of the individual, and depends alone on the power of truth. It does not ask, but rejects as incompatible with Divine truth, the aid of secular power. It is not a fact that Mormonism endangers either our religion or liberty.

But gentlemen say it will not do to trust the presence of this viper, this poison in our midst; that the virus will affect and spread itself through the entire mass of the people of the United States. Why, if the people have the virtue and intelligence that we claim for them, we can trust it to them safely. If they have not, if a whole people, fifty millions, invincible in war, and irresistible upon the Western Continent, have all their rights and liberties endangered by a few wild, superstitious Mormons, our fathers were greatly mistaken when they laid the foundation of our government upon the virtue and intelligence of the masses. We have made that grand discovery, and I suppose now their work is to be discarded. We are to tear down this superstructure from its foundation of sand, and dig down and find rock for a new foundation. We do not know whether it is to be this artificial rock now made by recent invention and process, or some old rock—granite or what not; we cannot tell whether it is to be Baptist or Presbyterian, Catholic or Mohammedan.

Now, Mr. Speaker, to be brief in recapitulation: Cannon was, by an overwhelming majority of the people of that Territory, elected a Delegate to this Congress. He was qualified under the law then in force. He is qualified under the Constitution of the United States, and it is not in the power of this House in judging of his qualifications to add to or subtract one thing from them.

The question here confronts us, shall we admit Mr. Cannon and uphold the Constitution and laws of our country, or, by rejecting him, trample them beneath our feet and gain the plaudits of the inconsiderate and intemperate? The question is a grave one. It is a solemn one. It embraces all that is vital in constitutional liberty. There can be but two forms of government, one personal, the other institutional. In the case of institutional government, the institutions themselves are the supreme power in the State. They are the ultimate tribunal; they are the power than which there is none higher. If you trample these down you start off with a mobocracy, and end inevitably in a military imperialism.

That is the question which in my judgment presents itself to every member here. I do not mean that gentlemen are not just as honest in their views in reference to this case as I am. But I do mean to say in my honest judgment this case puts to test the force and power of institutional governments. And I might say here in this connection, there comes fresh to my mind the language addressed by the Earl of Chatham to the British Parliament in their lust for power and in their eagerness to grasp and sway without limit and without stint the rod of empire over the Western World. I know you can do in this case just what he said England might do in reference to the colonies. He said, substantially: "I know the gallantry of our troops and power of your armies; I know that in a good cause you can crush America to atoms; but in this struggle if America fall she will fall like the strong man embracing the pillars of liberty, she will drag the Constitution along with her."

Polygamy, Mr. Speaker, is odious. I have no sympathy with it. But in this struggle it has this advantage which we have unwittingly given it. It has in some form got behind the Constitution of the United States. You may embrace it, but in doing so you may embrace both, and when you drag down polygamy take heed lest you do not involve the constitutional liberties of your country in ruin. There is no occasion for it. There is no exigency in the life of the nation demanding it. The virtue and intelligence of the people of the United States certainly give us ample assurance that this leprosy cannot extend generally to the people of the United States. As was said yesterday so well by the gentleman from Tennessee, those people are brought now in contact with the outer world. They are no longer isolated. They are no longer away by themselves. Railways traverse their borders. Our people are pouring in and settling up and inhabiting the country. And no one need fear but that, if the vice as depicted by gentlemen yesterday is so hideous, so offensive as practiced in Utah, the American people will naturally be so startled that they will turn against it and destroy it. It will be corrected. There need be no fears on that score. But suppose it shall survive a day or two; suppose it shall live until next Congress and pass over the next Congress; it shall of itself be a monument in commemoratien of the devotion to and love of the American people for the Constitution and laws of their country.

The gentleman from Iowa [Mr. Thompson] became so impassioned and so carried away with his theme yesterday in his efforts to seat Mr. Campbell, who received about one-tenth or less than one-tenth of the votes, that he actually enlarged upon and amplified the glory and sacred right of representation. Yes, the glorious right of representation! He tells us that there are 1,600 Gentiles who have voted for Mr. Campbell, and if you do not seat Mr. Campbell, the people will be denied the right of representation, and hurt and outraged in the most vital principles of their liberties and rights; forgetting that about 18,000 had spoken on the other side, consenting to be represented by Mr. Cannon.

Now I would like to ask that if it is a matter of so much importance, a matter so imperious in its exactions, that we should admit Mr. Campbell lest 1,600 persons who voted for him be left unrepresented, is it not ten times more important that we admit Mr. Cannon so that the 18,000 who voted for him shall not be left unrepresented?

In the few minutes which I have reserved I desire simply to state the logical conclusion of the argument which I intended to make in support of the minority report to the effect that Mr. Cannon cannot be excluded from a seat upon this floor without abolishing the office of Delegate from that Territory. And in supplement to what I have stated already, I desire to say simply by way of conclusion that the Christian religion is distinguished from all others by the fact that it does not make or require the help of temporal or political aid, but addresses itself directly to the head and heart of the individual, and depends alone upon the power of truth. It does not ask, but rejects as incompatible with Divine truth, the aid of secular power.

MR. BRAGG.

I am under the obligations to the gentleman from Illinois [Mr. Moulton], for giving me the opportunity to state the reasons which control my vote in the case now pending before the House.

I think it was Macaulay who said, in his review upon the life of Byron and his works, that the general public at times, like the individual, become affected with the gripes. The public occasionally are affected with a species of moral gripes, which seems to have broken out about this time, and manifests a disposition to vent itself upon the Chinese and the Mormons. As I shall vote to give Mr. Cannon a seat here, I feel it proper that I state the reasons why, in order to show that I do not feel that I am affected by any gripes, either moral or otherwise upon this subject.

I shall vote for him upon the mere cold legal proposition, and no other. I do not defend polygamy nor would I defend infidelity. Infidelity saps and attacks the very foundation of the Christian religion fully as much as do the practices of the "Latter-day Saints." Yet I doubt if any member upon the floor of this House would vote against a man because he had no religious convictions at all, and belongs to a class which the Bible says "hath said in his heart there is no God."

We are not an ecclesiastical synod; we are not sent here as an inquisitorial body to make inquiry whether A, B, or C comes up to the religious standard that we have established for ourselves. We come here as a legislative body. The Committee on Elections of this House has certain functions to discharge, which in no wise affects a man's religious belief or his practices under that religion.

The first question for us to determine in cold blood is: Was the Territory of Utah, at the last general election, entitled to a Delegate in this House? Were the people of Utah entitled to exercise the right of franchise? Did they exercise that right of franchise, and did they choose a Delegate to represent them here as their agent? The majority report of the Committee on Elections decides, first, that Utah was entitled to representation; second, that the population of Utah did possess the elective franchise; third, that they exercised that franchise, and, by an overwhelming majority, selected as their Delegate or agent, to communicate to us their wishes, George Q. Cannon, who, the committee report, is not entitled to be received upon this floor as their representative.

Was Mr. Cannon eligible under the law? The only eligibility required is that he shall be a citizen of the United States, and I believe that that even is not denied by the majority report, and they hold that there was no disqualification at all. Then if he fills all the requisites—

[Here the hammer fell.]

THE SPEAKER. The time of the gentleman has expired.

MR. BRAGG. The gentleman from Texas [Mr. Jones] agreed to yield me some time.

THE SPEAKER. The time of that gentleman has been exhausted.

MR. SPARKS. That gentleman from Texas agreed to yield some of his time.

THE SPEAKER. That is true; but nevertheless the time of the gentleman from Texas has been exhausted.

MR. DAVIS, of Missouri. I have some time left at the conclusion of my remarks yesterday, and I will yield ten minutes to the gentleman from Wisconsin [Mr. Bragg].

MR. BRAGG. I thank the gentleman. I say that when the Committee on Elections exercised their functions they were exercised legally and properly in ascertaining these several facts. When they have found these facts all in the affirmative, they have no right legally, morally, or otherwise, in the discharge of their duties as an Election Committee of this House examining into the election of a member or Delegate of this House to go outside of the naked legal propositions which were submitted to them and bring in for the consideration of this House a discussion upon the question of the propriety or legality of polygamy.

This agent, who has been selected by the polygamists to represent them here as their agent, has been here through two successive Congresses—

Mr. SPARKS. Through four Congresses.

Mr. BRAGG. Through four successive Congresses. He has borne himself as a gentleman in every respect. He has certainly not contaminated any member of Congress by any noxious doctrine.

Mr. ATKINS. Will the gentleman from Wisconsin [Mr. Bragg] allow me to interrupt in the little time he has to speak? I would like to hear from him if he can reach the point, upon the effect of the Edmunds bill, the recent law of Congress, upon the right of the Delegate from Utah to his seat, whether or not it is retroactive? That is the point in this case.

Mr. BRAGG. When I rose to speak, I did so simply for the purpose of giving the reasons, without entering into any general discussion, of my vote on this question.

I have considered the question which has been propounded to me by the gentleman from Tennessee [Mr. Atkins], and my view upon it from a legal standpoint is this: If Mr. Cannon was eligible and entitled to his seat when he received the franchises of his people which gave him the right to a seat, no subsequent act of Congress can deprive him of that right thus given him by the franchise which his people possessed, which they exercised, and which has become executed by the election which resulted in choosing him for this seat.

If the Committee on Elections desires to reach the question of polygamy, if this House desires to reach that question, if the sentiment of the country desires to reach that question, it must reach it by the disfranchisement of any person entertaining that species of religious belief which is entertained by the Mormons. And I doubt very much whether any member of this House will claim that the right exists in us to disfranchise any person in a Territory who by local law is entitled to the exercise of the right of franchise.

If they have that right of franchise, they have the right of selection, and when they have made their selection, if they are entitled to it, we cannot deprive them of the benefits of that selection unless we repeal the law which entitles Utah to a Delegate. For these reasons, Mr. Speaker, independently of all questions of polygamy or Mormonism, I shall cast my vote to seat Mr. Cannon as a Delegate from his people, to communicate to us their wishes upon the subject of legislation.

MR. MOULTON.

Mr. Speaker—If I can have the attention of the House I shall be able I think to state in a very short time the views which I entertain. I shall confine myself exclusively to what I conceive to be the points in the case, and to the law and the Constitution that apply in this case. A very wide latitude has been indulged in by the gentlemen who have preceded me in this discussion, some of them, as I think, not touching a single point that is really involved in this case. For instance, my friend from Pennsylvannia [Mr. Beltzhoover], and my friend from Wisconsin [Mr. Hazleton], occupied most of their time in discussing a proposition that has never been contended for by the minority of the committee, that is not contended for by me, and has been admitted by everybody for the last ninety years, that there is a difference between a Delegate from a Territory and a Representative from a State, No person so far as I know, has ever denied that proposition. It is distinctly admitted in the minority report; and more than that, one of the main arguments of the minority upon which they rest their conclusions is the fact of that very distinction. Therefore I say those gentlemen have spent their time in elaborating a proposition which I shall not seek to controvert. I admit there is a difference between a Delegate and a member of Congress; and I shall endeavor to show the application of the law in reference to this distinction.

Mr. Speaker, this case comes here precisely as every other election case comes, and it should be treated in the same way. It comes here under the law. By the order of the House it was referred to the Election Committee. That committee has made a report. Let me say further to gentlemen on both sides that this case is governed by the law and rules of evidence applicable to it, precisely in the same way as any other election case. Applying the rules of law to the facts in the case, as I hope to do, it seems to me that no lawyer can hesitate for a single moment as to the right of Mr. Cannon to a seat in this House.

My friend here from Michigan [Mr. Horr] says that he does not propose to trouble his brain about the Constitution or the laws. If it is only stated to him here, or he knows, that a man presenting himself for admission is a polygamist, that settles the whole question with him, without reference to the Constitution or anything else.

On the other hand, my friend from Tennessee [Mr. Pettibone] makes the admission that if Mr. Cannon should come here as a Representative from a State, although covered all over with the infamy of polygamy, he would be bound to vote to admit him among us. There is the difference between the two gentlemen. The gentleman from Tennessee holds that he would be bound under the Constitution and laws to admit Mr. Cannon if he presented himself as a Representative from a State. I say, too, that he would be bound to admit him, as polygamy is no disqualification under the Constitution; and I hope to show that the same rule, the same law, is just as obligatory upon this House with reference to the rights of a Delegate as the rights of a member. If I succeed in showing this, I hope that my friend from Michigan will reconsider the declaration he has, I hope, too hastily made. I shall omit much that I had intended to say, because I do not desire to weary this House. I shall only discuss what I consider the legal points that are involved in the case.

Now, I wish to call the attention of the House to the fact that since the formation of this government—at least since the case of James White, in 1794—Delegates have been seated on this floor, and in the language of Madison in that case, under the rules of the Constitution and the laws, and as a matter of absolute right. James Madison, then a member of Congress, and other distinguished men who had been in the convention that framed the Constitution under which we now live, all conceded, although there was then no law of Congress providing for the admission of a Territorial Delegate, that Mr. White had a right on this floor as much as any member, under the ordinance of 1787, passed prior to the adoption of our present Constitution, and obligatory at that time upon the Government by adoption. From that time to the present moment, whenever a Delegate has presented himself at the bar of this House, there has never been a question about his right to a seat here under the law and under the Constitution as much as a member. The books before me are full of cases recognizing the absolute right of a Delegate to a seat. I will not refer to these numerous cases which so fully recognize the right of a Delegate to his seat upon this floor. These cases and precedents are predicated upon the great fact of right, the absolute right of a Delegate under the law to a seat.

Under the present law relating to Delegates from the Territories it is provided that the people of the Territories shall send Delegates who shall have seats on this floor with the right to debate but not the right to vote This law was passed by this House and the Senate and signed by the Executive. It is absolute in its operation. It confers a right which this House alone cannot curtail or limit in any way whatever, as I think I shall be able to show.

Allow me to say further in this connection that under the option of the law it is provided in various statutes of the Federal Government that Delegates shall be treated precisely the same as members in reference to every right except that of voting. It gives them the same salary. They take the same oath. The same law applies to both in reference to vacancies. So on through the catalogue of the rights of both members. The law that gives a member the right to be seated here applies equally to a Delegate from a Territory.

There is another proposition I wish to call to the attention of the House, and I ask the consideration of the distinguished chairman of the Committee on Elections, the gentleman from Indiana [Mr. Calkins], to this point when he comes to the reply in the closing hour. It is this: Congress has passed a law by which the Constitution and the laws of the United States so far as they are applicable shall apply to the Territories. The law binds as much as any statute made by Congress under the Constitution. It has never been challenged till now, and has been executed and practised upon, and especially as to qualifications as to Delegates for more than twenty-five years. It is important to be remembered in this connection that the Constitution is applicable to the Territories so far as it can be applied, because, as I think, important consequences follow from that fact.

Now I wish to call the attention of the House for a moment to the proposition which has been made by the majority of the committee in their report in this case to the House. I think they have totally misstated, as they have totally mistaken, the law. I can do it in a very few words. The ground is boldly taken by the majority of the committee that Congress cannot make a law binding upon the next House as to the qualifications of Delegates from Territories. I will refer to page eight of the report of my distinguished friend from Indiana [Mr. Calkins], for the purpose of criticising it and to give him a chance to make an explanation of it when he comes to reply.

The following are the exact words of the report:

> He holds that it is incompetent for Congress and the Executive to impose on any future House the right of Delegates to seats with defined qualifications. That is to say, that when the several laws were passed giving the Territories the right to this limited representation, those laws were binding only on the Lower House, which permitted them to be, or made it possible for them to be passed, and were persuasive only to the House of future Congresses.

Let us analyze that. Here is a distinct denial on the part of the majority that Congress can pass a law defining any qualifications a member shal possess which shall bind the next House. That is the distinct proposition which is made here. In other words, although Congress may pass a valid and constitutional law fixing the qualifications of Delegates of Territories, requiring that they shall be seven years a citizen of the United States, twenty-five years old, and inhabitants of the Territories from which they come, and that if Congress passes such a law as that it is only binding upon the House that passes it. Let us test that and see where the logic of it carries us.

Here is the anti-polygamy bill passed this session which we nearly all voted for. I did reluctantly, I confess. Here is a law that does fix the qualification of a Delegate of a Territory. It provides in so many words that no Delegate who is a polygamist, or cohabits with more than one woman, shall hold any office of profit or trust under the Government. I should like to ask my friend to explain to this House the effect of this anti-polygamy bill. Here is a law defining the qualifications of a Delegate, although negatively, precisely as the Constitution defines the qualification of members negatively; and I should like to ask my distinguished friend from Indiana [Mr. Calkins], when he comes to close this debate, whether he means to say that the law which we have all voted for providing that no polygamist shall take his seat among us only applies to this Congress and the present House, and the next House in the next Congress can disregard it and admit a polygamist. That certainly is the logic of this report, and there is no escape from it, and if that is the law the anti-polygamy bill is a farce and a failure.

That doctrine is a heresy, in my humble judgment. Congress can prescribe qualifications as to the Delegates, and can bind the House by such qualifications. It is competent for Congress to fix the qualifications of Delegates from the Territories, they not being members under the Constitution, and to say who shall and who shall not be a Delegate and fix the qualifications; and when Congress has so said, it is not only binding upon this House, but it is binding upon every House that succeeds this until such law is repealed. That is the common sense of the thing and the law of the case, and it cannot by any possibility be otherwise.

Now, my friend in his report goes on further to amplify his words, as follows:

> And with reference to the election of Delegates who (if they hold any office or franchise at all) can be nothing but agents representing the property and common territory of all the people; it operates only on the lower branch of Congress, for their election extends no right to them to interfere with the business of the Senate or to act as members thereof.

Now, under the Constitution, Congress can make all needful rules and regulations in relation to the Territories. It has been decided that Congress is the sole judge of this power. If this is so, why cannot Congress pass a law, if it deems necessary, defining the qualifications of Delegates as necessary and proper for the regulation of the Territories? This right and power has never before been questioned, and when Congress passes such a law it is binding on this House and every branch of the Government.

The view of the minority upon this question is this, that this House can impose qualifications upon Delegates. It can fix limitations with reference to Delegates, and when the House has made the qualifications that have been made by the passage of a general law already referred to, providing that the Constitution of the United States shall operate in all of the Territories so far as applicable, that that act and by that law they did fix and establish qualifications and limitations and by that act they adopted the Constitution as a part of the statute law. Suppose they had put it in another form; suppose they had put it in this form, and had passed a statute adopting and restating the very language of the Constitution giving a Delegate the same qualifications that the Constitution requires for members of Congress, and that he must possess these qualifications before he could take his seat. I would like to have my friends upon the other side say whether that would not be a valid law passed by Congress and binding upon this House until repealed by an act of Congress. What is the reason it would not?

But, suppose we take the other view of the case, and admit for the sake of the argument that the Constitution is inapplicable, that it has no relevancy, and does not apply to the case, then what is the condition? Why, we are placed in this condition, that Congress has passed a law, as I have already stated, that the Territories shall have the right to send Delegates here to take their seats upon the floor. Now, if they have not prescribed any qualifications for the Delegates and the constitutional provision does not operate, what standard do you fix? Is the standard of qualification to be wholly arbitrary and at the caprice of each succeeding House? Now, does not this follow as a logical conclusion from the premises that where you have fixed no qualifications, no limitations, where you have not said who shall or who shall not hold the seat, or whether he shall be white or black, the people of the Territories are judges of the matter for themselves, and select the person whom they desire to send here to represent their interests? Congress specifies no qualification. Then the rights of the people as to the Delegates are absolute, and this has been the theory and practice for ninety years. The people have the right to stand upon the law; they have the right to rely upon what is "nominated in the bond." What rule will you apply when they are given the right to have a seat here, and come clothed with all of the power necessary to occupy it?

It seems to me that if you take the ground that the Constitution does not apply, then this consequence, as I have stated, necessarily follows that you have said to the people of that Territory, "You shall have the absolute right to send a Delegate here of your own selection, to take his seat under his oath of office, and you may exercise the right; but if the Delegate does not suit us we will not permit him to take his seat." I ask again, and I ask my friends upon the opposite side of the question to say, if they can, when this man comes holding such credentials as a Delegate, whether you can apply the constitutional provision to him as to qualifications that you apply to those who represent the people of the States? And why not apply the same rule? You say in answer, "He is outside of the Constitution; he is but the very agent of the Territory; he comes with just such powers as the law clothes him with, and no more or less." This we think no answer. The law could have fixed qualifications, but it did not, and therefore the presumption is that Congress did not intend to prescribe qualifications for Delegates.

The law simply says to the people: judge for yourselves, send up the man whom you desire to represent your interests, and he shall have a seat. I say that if there is no qualification prescribed by the law, you cannot exclude him, the man whom the people have sent, after you have permitted them to send him and he holds the certificate of his election and comes here claiming his right to a seat. This House, under the law, has no power to exclude. Why, now, for the first time, after the Delegate appears, apply additional qualifications and say that if he is a polygamist, a Catholic, a Methodist, or an atheist, he shall not be seated, when there was no such provision in the law? By the operation of that law that binds Congress, that binds everybody, he is entitled to come here, and, no limitations or qualifications having been specified, is entitled to his seat. There are many instances of the operation of law upon that principle, which are known to every lawyer, and the law is to be construed according to the language and import, and nothing can be added to it by mere construction changing the law. Therefore, whether you take the fact that the Constitution as applied to him, and the qualifications therein specified operate upon him, or whether you exclude that thought or idea, or whether he comes here under the law without any qualifications being fixed by it, you have no right to exclude in either case; certainly not in the latter case, because there was not, under the law at the time of his election, any qualification prescribed, and this House is as much bound by the law as the Delegate himself or the humblest individual in the land.

I want now, Mr. Speaker, to call the attention of the House, as briefly as I can, to one or two other propositions. I have forborne any discussion upon the number of votes shown by Mr. Cannon, naturalization, or anything of that kind; because it has been conceded by the majority of the committee that Mr. Cannon had over 18,000 votes and that Mr. Campbell had about 1,300; it is conceded that Mr. Cannon had been seven years a citizen of the United States, and also that he was an inhabitant of the Territory at the time of his election; if the constitutional qualifications are to be applied to him, that he is qualified. These facts being conceded, what is the reason he is not entitled to his seat. The gentleman from Tennessee says, notwithstanding the infamy of the man—and I think the history of Congress bears him out in that—notwithstanding the infamy of the man, if he is sent here from a State, he is bound under the Constitution to let him in; and if that law applies to a Delegate, the same logic would compel you to let him in.

But it is said here, and it has been stated repeatedly, that Mr. Cannon admits that he is or was a polygamist upon the 1st day of June, 1880. The principal objection that has been urged, and I may say the only argument that has been made, and in my judgment the only argument that can be made, is simply and solely that he was a polygamist, and therefore that he is a polygamist to-day. That is the argument and reason given why he should not be seated, and that is the naked question. Now I desire to address myself to that part of the argument, under the operation of the anti-polygamy bill before referred to.

MR. TOWNSHEND, of Illinois. Is there any evidence he was living in a state of polygamy since the adoption of that law?

MR. MOULTON. No, sir. I want to say a word or two as to the admission of Mr. Cannon as to being a polygamist. I want to call the attention of the House in the first place to the admission that they say was made and the circumstances under which it was made, to see what force and effect it has and how far and to what extent Mr. Cannon is bound by that admission or how it affects him.

In 1881, in the contest of Campbell *vs.* Cannon, at the end of a deposition that seems to have been taken in that contest, the admission is made that has been read. Now in the record there is not a particle of explanation given why it was made, or for what purpose it was made, or how it came to be there. I say there is not a particle of evidence in the record as to that. We are trying this case upon the law and upon the evidence. Some gentlemen have intimated that to exclude Cannon it is only necessary for them to know that he made that admission, without reference to what the law or the Constitution or anything else is. There is the admission. He protested at the time it was made against it, and says it is improper and irrelevant to any issue in the case. Still the admission is there, and it shows that he had been or was then cohabiting with plural wives. This is all it shows. It is an extraneous fact thrust into the record.

Now, suppose for the purpose of the argument, the admission was made. We say very frequently we admit a thing for the purpose of the argument. That is done in pleading. But he makes it under protest, and puts it on the distinct ground it is wholly irrelevant. And I say here, as a lawyer, and I do not think any lawyer on this side will differ from me, that so far as the issue between Campbell and Cannon was concerned, it was wholly irrelevant to any issue in the case, whether you apply the constitutional provision or qualification, or whether you take the law that makes no qualification. If the law prescribes no qualification, then he has a right to come here and demand his seat under the law, whether he is a polygamist or not. There is the admission. This case must be tried by the law and the evidence.

Now, Mr. Cannon had the right to assume that polygamy was no issue in his contest with Campbell, for the reason that this House in the case of Maxwell *vs.* Cannon, in the Forty-third Congress, where the precise question was involved, the Committee on Elections unanimously decided that polygamy was no disqualification for a Delegate; and this report was made by republicans, and the House sustained it, and Cannon took his seat. Therefore, Mr. Cannon was justified in regarding polygamy as not being an issue and as not affecting his rights.

It is said that, the admission being made, the anti-polygamy law that was passed by this Congress operates and excludes Mr. Cannon. I admit that this law operates *en presenti*. I do not admit that it operates retrospectively; and I want to show to the House, which I think I can do in a very few moments, that this anti-polygamy law deprives Mr. Cannon of no right whatever, and cannot possibly affect him, for the reasons which I think I can give.

The first section of this act provides:

> Every person who has a husband or wife living, who, in a Territory or other place over which the United States have exclusive jurisdiction, who hereafter marries another, whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a Territory or other place over which the United States have exclusive jurisdiction, is guilty of polygamy, and shall be punished by a fine of not more than $500 and by imprisonment, etc.

The third section provides:

> That if any male person in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, shall be guilty of a misdemeanor, and fined and imprisoned, etc.

And I want to say to my friends on the other side of the House that the first and the third sections apply to this Territory here; that they apply to Washington City; but I am willing to give them the advantage of the charity of the presumption that they have not violated this law since it has taken effect.

Then the eighth section provides:

> That no polygamist, bigamist, etc., shall be eligible for election or appointment to or be entitled to hold any office or place of public trust—

Under the government. If you say that this law operates *en presenti*, if you say that it operates now, it does not affect Mr. Cannon in the past. Mr. Cannon, in 1881, on the 1st of June, as you say, admitted that he was living with plural wives. That is admitted, but there is no admission or no proof of any violation of this law by Mr. Cannon since the passage of the law. And before a man could be convicted of any offense, the offense must be proved against him. This law was passed this session. The admission was that he was living with plural wives before the law was passed.

Now, I want to call the attention of my friends on the other side to another fact, and I challenge contradiction from them. I say that Mr. Cannon was living in violation of no law of Congress or of the Territory prior to the passage of the act of this session.

You have all charged him with being a felon, with having lived in violation of the law. I say there is not a particle of proof of that assertion in this record, and a man is not to be sent to the penitentiary or condemned without proof. I ask my friends on the other side to take this record, examine it, and show if they can where Mr. Cannon has, up to the present time, violated any law of Congress.

The law which the act of this session was intended to amend is to be found in Section 5352 of the Revised Statutes. Why did Congress amend it? Because that law, under which Mr. Cannon was living, only provided that if, after the passage of the law, which was in 1862, any man should marry more than one wife, should contract marriage with two or more women, he should be subject to the penalty prescribed. That law, which the act of this session proposed to amend, does not provide that the cohabiting with two or more women in Utah or any other Territory after the passage of that law shall be a criminal offense.

Now, if it is true that the marriage of Mr. Cannon to these women—and his answer in the case of Maxwell *vs.* Cannon, referred to by Mr. Pettibone, would go to prove as well as all the facts would seem to show that he was living with plural wives—yet, if it is true that he was married to more than one woman, and the marriages were contracted prior to the passage of the law of Congress of 1862, whose defects the anti-polygamy bill was intended to remedy, then simply cohabiting with plural wives since that law took effect was no offense.

Prior to the passage of the law of this session, Mr. Cannon was not living in violation of any law of the United States. If he has married since the passage of the law of this session, he having a wife living, or has cohabited with more than one woman, that would be an offense against the law. But I say there is not a particle of proof in the record or anywhere else to that effect. The presumption is that every man is innocent of any violation of the law until he is proven to be guilty.

The very passage of the act of this session shows that the construction I have given to the prior law did not provide a punishment for cohabitation with more than one woman. That was the very reason why the law of this session was passed. And the law of this session operates only upon persons hereafter; those who marry more than one woman or cohabit with more than one woman after the passage of the law. The former law applied only to marriages. The law of this session goes further, and applies not only to those who marry, but to those who cohabit with more than one woman.

Now, where is the proof that Mr. Cannon was married to plural wives subsequent to the law of 1862? Before that time there was no law in the Territory against it. That is the very reason why he answered as he did, as was read by my friend from Tennessee [Mr. Pettibone], that he was not living with plural wives in violation of any law. The statement was true at that time, because whatever marriages there were had taken place prior to 1862, and the law of 1862 could not operate retrospectively upon marriages that had taken place before the passage of that law.

If you say that the bill of this session operates upon Mr. Cannon, you must recollect that the provisions of that bill operate only after the passage of the bill. The bill uses the word "hereafter." It provides that any person who does so and so. If the charge against Mr. Cannon is that he has violated the law, then you must show that he has violated it since it passage.

Let us say to the conscientious gentlemen on the other side of the House, and I hope there are many of them, there is not a particle of proof that Mr. Cannon has violated this law. Besides, let me state another fact. One person alone cannot violate the law. It takes more than one. There must be two or more women to consent to the marriage with one man or to consent to cohabitation with him under this law to make it an offense.

The act of polygamy as defined by the bill of this session consists in the fact and in the intention. A great many of my friends have read from dictionaries in regard to the definition of polygamy. Why should you go to the lexicons, to the law dictionaries, to Webster, or anywhere else, when the law itself defines what polygamy is.

Here is the definition: "Every person who, having a husband or a wife living in a Territory or other place over which the United States has exclusive jurisdiction, hereafter marries another, whether married or single, or upon the same day marries more than one, etc., shall be guilty of polygamy." And section 3 of the act of this session makes cohabitation with more than one woman a misdemeanor, subject to fine and imprisonment. This description of the offense is clear, and it excludes every other definition or description of polygamy.

Now I would like to ask the gentlemen who are to follow me to point out how Mr. Cannon stands amenable to this law or has violated it. The presumption is that every man is innocent until the contrary is shown. And that presumption applies to Mr. Cannon's case. You must have positive and distinct proof before you can show him to be guilty under this law. Suppose he was to-day indicted for violation of this law, would his admission in 1881 that he was then a polygamist be any proof that he has been a polygamist under this law? Besides, here is the great fact that stares us all in the face, the universal presumption that every man obeys the law, that he violates no criminal law. You have to show it by proof if you make the charge that Mr. Cannon has violated the law. This is the law which gentlemen say he has violated, and this is the law on which many of you gentlemen perhaps will base your vote against Mr. Cannon.

Now, I say that since the passage of the act of this session Mr. Cannon has not violated the law. It has not been shown that he is now living with two or more women. It has not been shown that since the passage of that law he has married any woman, he having a wife living at that time. No one of the elements that go to constitute the offense of polygamy has been proven in any manner.

Now, what is the presumption of law in such a case as this? On this point I want to read a single authority from one of the Missouri reports, (29 Mo., 259,) a case almost exactly in point. It relates to the principle of presumption of innocence. In this case a party had charged a man and woman with living in adultery. An action of slander was brought. It was proved that the woman admitted that she had been married in Germany before she claimed to have married the person she was then living with. In the court below this instruction had been given:

> If the jury find from the evidence that the plaintiff, Margaret Klein, was married in Germany to another person than Leonard Klein, the plaintiff, then such relation is presumed to continue; and it devolves upon the plaintiffs to prove to the satisfaction of the jury that such marriage was legally terminated before the date of the [marriage certificate, read in evidence, or they cannot recover.

Now, the Supreme Court of Missouri, to which the case was appealed, declared that such was not the law—upon what principle? Upon the principle I have just enunciated, that the presumption is every man obeys the law; that where a penal or prohibitory law is passed the presumption is that everybody obeys it until the contrary is shown. Besides, even if it be shown that a person was at one time a violator of the law, there is the *locus penitentiæ;* there is the time for repentance; so that the presumption of innocence, charitably founded upon the experience of ages, and laid down in all the elementary books, prevails all the time until the contrary is shown. Here is the language of the Supreme Court of Missouri:

> We think the first instruction which the court gave in this case at the instance of the defendants was erroneous. There was no presumption that a marriage, which was proved to have existed at one time in Germany, continued to exist here after positive proof of a second marriage *de facto* here. The presumption of the law is that the conduct of parties is in conformity to law until the contrary is shown. That a fact continuous in its nature will be presumed to continue after its existence is once shown, is a presumption which ought not to be allowed to overthrow another presumption of equal if not greater force in favor of innocence.

The court further says:

> The presumption was that this marriage was a lawful one, and that the former marriage in Germany, if any such was established, had been dissolved.

I read further from the language of the court:

> There was not any evidence in this case, so far as the bill of exceptions shows, that the first husband of Mrs. Klein was still living; but if this had been established, we think she was still entitled to the benefit of the favorable presumption that the first marriage had been dissolved by a divorce, and that it was not incumbent on her, in this character of action and under the pleadings in this case, to produce a record of the judicial or legislative proceedings by which the divorce was effected.

Now apply that to this case. A year ago Mr. Cannon acknowledged that he was living with plural wives, which I have shown you was then in violation of no law of Congress whatever; I challenge any gentleman to show that at the time it was an offense against the law. Now you have passed a law making cohabitation with more than one woman and marrying more than one woman a crime. Why may it not charitably be presumed that Mr. Cannon, as a good citizen, obeys the law as the rest of us do? That is the presumption of the law; and if so, how has it been shown that he has violated the law?

A great deal of newspaper comment and hearsay testimony has been introduced here. I want to call attention to the fact that since the passage of this law the small remnant of polygamy which before existed in the Territory of Utah is fast disappearing. The polygamous relations of the parties are being broken up. The influence of this law is operating powerfully upon that people; for they now understand that if they live in violation of this law they are subject to fine and imprisonment. The presumption is that under the operations of this law polygamy would cease; that there will be no more violations of the law, and this presumption applies to Mr. Cannon's case.

But gentlemen say that this law operates against Mr. Cannon and excludes him. In what way? There are three sections applying here. The first section defines polygamy and makes it an offense; the third section declares cohabition an offense, and the eighth section, referring to those two sections, provides—

That no polygamist—

That is, no polygamist, as defined by this law, the first and third sections cannot refer to anything else; construing the whole statute together, this is the legal effect of the law and this is the language:

> Section 8. That no polygamist, bigamist, or person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor or emolument, in, under, or for any such Territory or place; or under the United States.

All the other provisions defining polygamy use the word "hereafter;" that is, after the passage of the act; and it is incumbent upon any one making a charge to show that the person accused has violated the law since this act went into operation.

It is said—it has been said by nearly all the gentlemen who have preceded me—that Mr. Cannon comes here covered with crime, and for this reason we cannot admit him. This is the only topic which I shall have opportunity to consider in the time I have remaining. The proposition is that if a man is charged with an offense, it is the duty of this House, when he makes his appearance here, to exclude him. Now I think it is a principle laid down in the books (and the precedents of the House are all in that direction), that although a person may be charged with crime, and even actually guilty, it is no consideration for the House, upon his admission to a seat, under the Constitution and the laws. It may be said that this only applies to a member; but I think that I have shown that the law and the constitutional provisions extend the same principle to a Delegate. But if the law does not apply the principle to a Delegate, then crime is no disqualification, because there is no law making it so, and you cannot exclude a Delegate upon that ground.

Now, all the precedents of this House say, and it is laid down in the books, that the only requirement resting upon a person applying for admission as a member here is to present his certificate, properly authenticated, to show that he has been elected; that when this is done, you are bound to admit him. That is his *prima facie* case.

I want to call the attention of the House to what a committee has said in

reference to this proposition that the allegation or fact of crime is no consideration for the House or for the Committee on Elections; that if it be true that Mr. Cannon is a polygamist, it is not a question to be considered by the Committee on Elections or by the House, but that after he has been admitted, if his presence does not comport with the dignity of the House, he may be expelled.

I read from a celebrated report in a recent case where it is held that bribery or other crime committed by the member-elect, and which did not affect or influence the result of his election, could in no sense be construed to render his election void. That was the report of the majority of the committee, that if a man was guilty of the crime of bribery (and it certainly is as great a crime in law as polygamy), it was no reason why he should be excluded from his seat. It is further stated in this report as follows:

> That bribery by a candidate for elective office (in the absence of a statute making it a disqualification) does not disqualify to hold the office at the common law was held by the court of Queen's Bench in Regina *vs.* Thwaits (18 Eng. Law and Eq. Reports, 219, 221), in a proceeding in the nature of a *quo warranto* to try the title to an office where acts were shown which were by the court held to amount to bribery, but which did not affect votes enough to change the majority; and the respondent was therefore entitled to retain his seat as a member of the municipal council.
>
> The same doctrine is held in Pennsylvania as to a sheriff, in Com. *vs.* Shaver (43 Watts and Sergeant, p. 338).
>
> The English rule laid down by Cushing in his excellent work, without giving either the origin or reason of the rule, is calculated to mislead persons in this country.
>
> It is quite demonstrable that the rule owes its existence to disqualifying statutes of England, and can have no application to questions arising in the Congress of the United States under our present Constitution and laws.
>
> * * * * *
>
> An examination of all the cases cited in Rogers, Douglas, and other English authorities, where a member of Parliament has been unseated for bribery, treating, etc., by himself or his agents, where the votes thus affected were less in number than his majority, will show that in every case the decision rests upon the special English statutes, with which we have nothing to do.
>
> * * * * *
>
> In some of the States it is held that prior conviction of the disqualifying crime is necessary before such a rule can be applied by a legislative assembly. It is not admitted that either the organic act of a State or its legislature can prescribe disqualifications of any kind for a member of the House of Representatives of the United States, but it may be proper to state here that the constitution of Minnesota (section 15, article 4) gives full power to the legislature of that State to render ineligible to hold office, any person guilty of crime, and that legislature has not made bribery of voters a disqualification to hold office, but it has only made it a misdemeanor, punishable by fine and imprisonment in the county jail (Statutes Minnesota, 1878, page 5, section 66).
>
> It may be observed that under no provision of the Constitution of the United States does crime committed by a member in his election disqualify him from taking and holding his seat.
>
> The reason for the English rule wholly fails in the case of a member of the House of Representatives.
>
> Justice Johnson, of the Supreme Court of the United States, in an early case, in speaking of distinctions between American and English legislative bodies, said:
>
> "American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice under the specious appearance of merited resentment."—6 Wheaton, 231.

In judging of the election of a member, the House deals alone with the question of the number of votes the member received, and if it appears that he has a majority of the votes cast, excluding all illegal and void votes cast, and a full and fair election has been held by which such majority has been obtained, or at least the majority would not have been affected by any unfairness or improper practices in the election, then the conclusion is irresistible that such member has been duly elected.

In judging of the returns of its members, the House deals with the formal returns, at least preliminarily, on which a member is expected to be admitted to a seat in the first instance.

In judging of the qualifications of a member, neither the question of election nor returns is involved. The qualifications of a member of the House of Representatives are fixed by the Constitution of the United States, Article I, Section 2, as follows:

"No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

THE SPEAKER. The gentleman's time has expired.

MR. MOULTON. I should like to have a few minutes longer.

MR. CALKINS. How much time does the gentleman require?

MR. MOULTON. About ten minutes.

MR. CALKINS. I move, by unanimous consent, the gentleman's time be extended ten minutes.

There being no objection, it was ordered accordingly.

MR. MOULTON. Now, Mr. Speaker, here is a report which says in the face of a charge of bribery against a party, that it is no business of the committee to inquire into it or to consider it at all, but that the only question which can be considered, is the number of votes which have been cast, and who has the highest number.

MR. SPRINGER. What case is that?

MR. MOULTON. It is the celebrated case of Donnelly *vs.* Washburn; and I wish to read the names of those who signed the report. They are as follows: J. Warren Keifer, E. Overton, Jr., W. H. Calkins, John H. Camp, W. A. Field.

I understand this full and exhaustive report was drawn up by Judge Field, and subscribed by these distinguished jurists. They have said in the strongest language, that this House has no right to inquire whether the applicant was guilty of bribery, whether he was a drunkard or not, whether he was an adulterer or polygamist, but that the only question which they have to inquire into, is whether he received a majority of the legal votes cast, and came here under the provisions of the Constitution and the law.

It was upon that ground, Mr. Speaker, that the gentleman from Tennessee [Mr. Pettibone] said that if Mr. Cannon came here as a member instead of a Delegate, he would be bound to vote to admit him. I have already shown that the Constitution and laws apply precisely the same rule to a Delegate that they do to a member.

Now, the people who send a man here are better judges of the qualifications and ability and integrity of the man they send than this House possibly can be. Why? This House seems to exhibit a holy horror against any one who is a criminal or charged with an offense coming within its sacred precincts.

I say it is well known that murderers have sat in this House, that those guilty of bribery and convicted on the floor of this House have retained their seats. Herbert, of California, who killed a man in cold blood in this city, voted on the last roll call of the House, after it was known to everybody he had committed a cold blooded murder. Matteson, of New York, who had accepted a bribe, and on an investigation by the House, resigned his seat to prevent expulsion, was afterward elected and took his seat in this House, notwithstanding a resolution was offered that the question should be inquired into. The House gave it the go-by, and that notorious briber, who had disgraced this House, and who would have been excluded from it by a two-thirds vote if he had not resigned, was allowed to remain in your midst, and you were bound to receive him under the Constitution.

I say the only standard which can be set up here, is the standard of the law, and that law fixes the same qualifications for a Delegate it does for a member. This House is bound by the law, and no such heresy ought to be permitted that one house of Congress can ignore the law made by a previous Congress and signed by the Executive.

There is another thing I should like to call the attention of the House to. It is a matter in which the whole question of polygamy as a qualification has been discussed. I will send it to the Clerk to be read. It is from the case of Maxwell *vs.* Cannon, decided in the Forty-third Congress, when the same question was made as to his polygamy. You had no holy horror of his polygamous relations then.

The Clerk will read what the committee say.

The Clerk read as follows.

"That George Q. Cannon is not qualified to represent said Territory, or to hold his seat in the Forty-third Congress, for the reason, as shown by the evidence, that he, on and before the day of election in August, 1872, was openly living and cohabiting with four women, as his wives, in Salt Lake City, in Utah Territory, and he is still living and cohabiting with them."

On the question of qualifications, and the effect of making the Constitution a part of the law by act of Congress, the committee say:

"It being conceded that the contestee has these qualifications, one other inquiry only under this head remains, to wit: Does the same rule apply in considering the case of a Delegate as to a member of this House? The question seems not to have been raised heretofore. The act organizing the Territory of Utah, approved September 9, 1850, enacts that the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable. It was said on the argument, that the Constitution cannot be extended over the Territories by act of Congress, and the views of Mr. Webster were quoted in support of this position.

"We do not deem it necessary to consider that question, because it will not be denied that Congress had the power to make the Constitution a part of the statutory law of the Territory as much as any portion of the organic act thereof. For the purpose of this inquiry it makes no difference whether the Constitution is to be treated as constitutional or statutory law. If either, it is entitled to be considered in disposing of this case."

Upon this point there does not seem to have been any difference of opinion in the committee.

The committee in the same case, referring to the question of polygamy, says:

"The question raised in the specification of contestant's counsel, and above transcribed, is a grave one, and unquestionably demands the consideration of the House. This committee, while having no desire to shrink from its investigation, finds itself confronted with the question of jurisdiction under the order referring the case.

"The Committee on Elections was organized under, and pursuant to, Article I, Section 5, of the Constitution, which declares: "Each House shall be the judge of elections, returns, and qualifications of its own members." The first standing committee appointed by the House of Representatives was the Committee on Elections. It was chosen by ballot, on the 13th day of April, 1789; and from that time to this, in the vast multitude of cases considered by it, with a few unimportant exceptions, in which the point seems to have escaped notice, the range of its inquiry has been limited to the execution of the power conferred by the above provision of the Constitution.

"What are the qualifications here mentioned and referred to the Committee on Elections? Clearly, the constitutional qualifications, to wit, that the claimant shall have attained the age of twenty-five years, been seven years a citizen of the United States, and shall be an inhabitant of the State in which he shall be chosen. The practice of the House has been so uniform, and seems so entirely in harmony with the letter of the Constitution, that the commmittee can but regard the jurisdictional question as a bar to the consideration of qualifications other than those above specified, mentioned in the notice of contest, and hereintofore alluded to.

"We conclude that the questions submitted to us, under the order of the House, come within the same principles of jurisdiction as if the contestee were a member, instead of a Delegate."

The minority said:

"It is admitted in the report, and the fact has not been and is not denied that Mr. Cannon possesses the constitutional qualifications, unless the qualifications of a Delegate in Congress from a Territory differ from the qualifications fixed by the Constitution for a member of the House. There can be no sufficient reason assigned for the position that the qualifications are any different. * * * The line of demarkation between these two great powers of the House, the power to judge of the elections, returns, and qualifications of its own members by a mere majority vote, and the power to expel its members by a two-thirds vote, is clear and well defined."

The "views" of the minority on the point were further expressed in these words:

"But a graver question than those we have considered is the question whether the House ought, as a matter of policy or to establish a precedent, to expel either a Delegate or member on account of alleged crimes or immoral practices, unconnected with their duties or obligations as members or Delegates, when the member or Delegate possesses all the qualifications to entitle him to his seat.

"If we are to go into the question of the moral fitness of a member to occupy a seat in the House, where will the inquiry stop? What standard shall we fix in determining what is and what is not sufficient cause for expulsion? If a number of members engage in the practice of gaming for money or other valuable thing, or are accused of violating the marital vow by intimate association with four women, three of whom are not lawful wives, or are charged with any other offense, and a majority of the House, or even two-thirds, expel them, it may be the recognition of a dangerous power and policy. If exercised and adopted by one political party to accomplish partisan ends, it furnishes a precedent which it will be insisted justifies similar action by the opposite party when they have a majority or a two-thirds majority in the House; and thus the people are deprived of representation, and their representatives, possessing the necessary qualifications, are expelled for causes outside of the constitutional qualifications of members, or those which a Delegate must possess, so far as his qualifications are fixed by reason or analogy, or are drawn from the principles of our representative system of government."

It may be stated that the reports, both of the majority and minority, were made by republicans.

That is a precedent that covers the case now in this House in every particular. It was exhaustively discussed in the committee of the House, and was adopted by the House by an overwhelming majority, and it stands today as the rule and law of the House, unless it should be reversed.

The issue in that case was sharply made, and the rule established that Delegates from Territories are entitled to the benefit of the constitutional limitations as qualifications, and that polygamy was not a disqualification.

Now, if the rule that has been established and practiced since the formation of the government as to qualification for members and Delegates to the House is to be reversed and a different rule adopted, what standard shall it be?

This House may exclude a member on a charge of polygamy. The next

House may exclude a person elected because he is a heretic or a Catholic or a Methodist, or because he has been charged by his opponent with adultery or some other offense.

We have associated with him for six years, eight or ten years upon terms of equality, and I am glad to see that my honored friend, the gentleman from Indiana, in his report says that he is a gentleman, and that he makes no aspersions upon his personal character or honor. A legislative body like this where the members are elected by the people, who are the sovereign in this country, should not set up any transcendental standard of moral qualifications to entitle one to a seat. If a high moral standard was a prerequsite to a seat here, but few might find admission. The people elect men to office for their supposed fitness and ability to take care of the people's interests. The question of immaculate virtue is not much considered. I think the law and the evidence is with Mr. Cannon and that he is entitled to his seat. It is for this House sitting as judges on his case to say on their oaths whether Mr. Cannon shall be seated here as a Delegate from the Territory of Utah, or whether he shall be excluded, and precedents, the Constitution, and the laws shall be violated and the people of Utah deprived of representation.

MR. CANNON, OF UTAH.

Mr. Speaker—As I have not prepared any written remarks, I will feel greatly obliged to members if they will allow me to proceed with what I have to say, without interruption.

I did not expect when this debate commenced, to have anything to say upon this question, unless the necessity should arise such as I think has arisen. I would feel ashamed, Mr. Speaker, if I could get the opportunity that has been afforded me now, to go back, should the House vote that this seat is vacant, to my constituents without saying something in reply to the many charges which have been made against them by various speakers during this debate.

I am comforted, Mr. Speaker, by one reflection: That Christianity which has been so much vaunted upon this floor, and which has been held up in contradistinction to that system which many of my constituents believe in, was itself a persecuted sect, and its Founder was crucified between two thieves. And from that day until the present every man who has ever stood among his fellowmen to declare principles which came in conflict with popular ideas, has in almost every instance, had to lay down his life as a proof of the sincerity of his convictions concerning that which he has taught. There has been no end of false statements made on this floor concerning the people with which I am connected. But while this flood of false statements has been pouring over the country, concerning the people of Utah, scarcely a voice has been heard in their defense.

Those who attempted to say something favorable concerning them in the first discussion which took place upon the Utah case were sneered at and were derided and laughed almost out of the arena, to prevent them from saying a word respecting the morality, industry, the good order, or other good qualities the people of Utah possess.

Sir, that people have suffered persecution, but I did not expect the day would come when, on the floor of the American Congress, the fact that they had been driven five times from their homes would be cited as a reason why they should still be illtreated, and why further inhuman resolutions should be adopted against them. But this has been the case in this discussion. The fact that they lived in Ohio, the fact that they lived in Missouri, the fact that they lived in Illinois, and that, mobbed, plundered, and driven out, they took their flight into the wilderness, has been urged as a reason why they should be treated now as is proposed, as has been enacted in the law that has passed this body and passed the other house, and that is now on the statute-book, and also as a reason why the people should be deprived of their representation on this floor.

In 1847, Mr. Speaker, in company with a large number of others, I reached Utah Territory, which was then a portion of the Mexican Republic. While we were at Council Bluffs, in the summer of 1846, a demand was made by the Federal Government upon the traveling camps of the Mormon people for five hundred young men to enlist in a battalion to go to California and fight in the Mexican war. Those five hundred young men enlisted, and they helped, with others of their countrymen, in conquering and securing California, which then comprised what is now Utah Territory and adjacent Territories, including the now State of Nevada.

Before the treaty of Guadalupe Hidalgo, we had reached Salt Lake City, and one of our first acts after reaching that place was to hoist the United States flag and take possession of the country as citizens of the United States. Though we had fled from religious persecution, there was deeply implanted in our hearts a love for the institutions of this country. We knew that there was no form of government upon the face of the earth that could be compared with this under which we dwell; that the largest possible liberty that man could desire could be enjoyed under this Constitution, which had been secured by so many sacrifices. And though we might have formed alliances with others, with neighboring powers, there was no disposition of that kind. The people were fondly attached to their country, to its institutions, and to its Constitution. At that time there were comparatively few of foreign birth among the people. A provisional government was formed as quickly as possible, under which the people dwelt until they could bring their condition before Congress. As soon as practicable delegates were sent down to Washington asking for the admission of the country as the State of Deseret, this being the title that was given to the provisional government. Almon W. Babbitt came down here in 1849; John M. Bernhisel came down afterwards; both of them acting as delegates representing the people, who, as I have said, had formed a provisional government, and enacted laws for the government of the country and the maintainance of good order.

In September, 1850, Utah Territory was organized, at the same time that New Mexico was organized, and at the same time that California was admitted into the Union.

Our petition to be admitted as a State was denied us, but we were granted a territorial form of government. The first governor of the Territory who was appointed, was Brigham Young, concerning whose family and the size of it the gentleman from Wisconsin [Mr. Hazelton] told you yesterday. He was appointed by Millard Fillmore and acted as such governor for four years. At the expiration of that term Franklin Pierce, who was then President of the United States, reappointed him governor, and he continued to act in that capacity until the expiration of the second term of four years.

John M. Bernhisel came here as the Delegate from that Territory; a gentleman whom some few of the older members here will recollect; a man who in every way adorned the position, and whose conduct in life and every thing pertaining to him was unexceptional. He was here for nearly twelve years. He served five terms in Congress, besides the time he was here as a representative of his people previous to the organization of the Territory.

During his term of service here the law of 1862, to which allusion has been made, was enacted. He was a polygamist, as the term goes; he had more wives than one, as also had the governor of Utah Territory who served the eight years for which he had been appointed.

In 1866 William H. Hooper was elected to serve as Delegate from Utah, and continued to serve until 1873, when George Q. Cannon was nominated, elected, and came here to Congress. With the exception of one term that was filled by a gentleman, of the name of Kinney, those three men whose names I have given have represented Utah Territory on this floor during the entire period of the existence of Utah as a Territory, now nearly thirty-two years.

During all that time not a question has been raised, except that to which allusion has been made in this discussion, the question in my own case. In the Forty-third Congress my seat was contested, as the seat of my predecessor had been, not because he was open to the charge of plural marriages, for it was well known he had but one wife. His seat was contested on the ground that he was a Mormon, and his contestant claimed that no Mormon was entitled to a seat on this floor.

The first man who contested his seat had 105 votes against upward of 12,000 votes given for Mr. Hooper. That man came here and remained during the entire session, annoying the sitting Delegate with his claim to the seat. It was during that contest that all this matter was published which has been quoted on the other side during this discussion. It was reported by a member of the Committee on Elections from New York, who made this report individually, and, though appearing on the record, was responsible for it. That report was entirely his own, and it was *ex parte* and uncontradicted, because there was no fair opportunity given to the people whom it maligned to meet and disprove the statements which it contained. And like other statements which are constantly being made, they are again and again quoted as though they were true because they appeared in this report to Congress. And if contests should continue, they will be again quoted, and the same kind of *ex parte* statements, which are equally unfounded, will probably be quoted from the speeches which gentlemen have made here to-day, when in reality they will not bear the least investigation, for they are untrue and without foundation in fact.

On the 2d day of November, 1880, in a convention of delegates from all parts of the Territory of Utah, I received, on my part, the unanimous nomination for Delegate to this House. Notwithstanding all that has been said about church and state, I assert here that there is no place in the United States where there is greater freedom and greater liberty for the expression of opinions by the people respecting the men whom they wish to serve them than there is in the Territory of Utah. Our political organization is entirely distinct from our church organization. It is true that the members of the church are members of the political party, because they are all—that is, the great bulk of the people, now numbering over one hundred and twenty thousand according to the last census—members of that church. We have no salaried ministers. Every man is a preacher who is a reputable man among us. From the midst of the congregation men are called to preach, very frequently without any previous notice. All the males over twenty-one years of age of good repute hold office in the church. It is this, and this alone, which can give any color to the statements that there is a connection between church and state.

Now, I wish to say here that though I have had probably as much influence in political matters as most of the men in the Territory of Utah, occupying as I do a position of confidence among the people, I can state on my honor, that beyond the expression of an opinion as a citizen when asked, at no time and under no circumstances have I endeavored to influence any man or body of men in the Territory of Utah, respecting the selection of any one they had in view for office. I have not myself used any influence of that kind that could possibly be called by any one improper. When I speak this of myself, of course I speak of my own personal knowledge. But I think I can say the same for the rest of the leading men of Utah. Whatever influence they have used has been always to have the people select and vote for men who would worthily fill the offices. Knowing the jealousy there is abroad respecting this matter, there is the greatest care exercised so as to prevent anything from occurring which would give color to the prejudice existing upon this point; yet of course where men have influence, if their opinions are asked, their views will always have considerable weight.

All the forms of political procedure prevail in Utah as in other Territories and in the States. The people hold their primary meetings, elect delegates, and those delegates meet in convention, sometimes instructed who they are to vote for and sometimes not, and every delegate has the right to express his views in favor of or against any candidate, and to vote for whom he pleases, and as the secret ballot prevails in Utah there can possibly be no interference on the part of any one to prevent citizens from expressing their unbiased choice for any candidate. It was a convention of this kind, composed of delegates from all parts of the Territory, which nominated me as a Delegate to Congress. I had given my friends to understand that I was not a candidate, and had done so on every previous occasion when I had been nominated; for you know, gentlemen, the position I have occupied here now for nine years, is one which no one capable of filling the place would desire to occupy. It is not pleasant to be made a target for every man who wishes to gain credit for his morality to aim his arrows at. In coming here, however, I have been sustained by the consciousness that I was at a post of duty where it was necessary for some one to represent the people and that I had the solid support of my constituents. It was the unanimous feeling of the delegates coming from all parts of the Territory that I should be nominated, and I received their unanimous vote. At that time I was occupying the position of Delegate in Congress. No question as to my eligibility had arisen or could arise; my constituents had the best of evidence in their possession that I was eligible, from the fact that I was at that time a Delegate in good standing in this House with an unquestioned right to my seat, and was in the same position when I was voted for and elected. Directly after the election I came here and took my seat and served through the last session of the last Congress.

But the Governor of Utah Territory, having an idea that he had the opportunity to gain fame and make himself popular, entered, as I have full reason to believe, into a conspiracy with others to precipitate upon the country this question, for the agitation of which a favorable opportunity had been long sought, to furnish some excuse for nullifying the election, and either making the seat of the Delegate vacant, or have a man occupy it whom the people had refused to elect. I having been born in a foreign land, he affected to entertain the belief that I was not properly naturalized. At our last interview, before I came to Washington to occupy my seat at the last session, he told me he thought some question would arise on that point. I told him then that it was a matter which the House had decided in the Forty-fourth Congress, that the question had been fully examined and adjudicated, and I thought there ought to be some time in a man's life when the statute of repose should intervene to prevent his being annoyed upon a question of that kind, especially after it had been so thoroughly investigated. I told him further that it was the province of Congress to decide upon the qualifications of its members. But in accordance, as I believe, with this pre-arranged programme, he withheld from me the certificate of election.

I came here, as you know, and claimed my seat as I had done before. I courted investigation. I have been willing that this charge should be thoroughly re-examined, although, as I said, it was thoroughly investigated by the Committee on Elections of the Forty-fourth Congress, who unanimously reported that I was a citizen of the United States. Since this session began, a distinguished republican member of the Committee on Elections, well known, if not personally at least by reputation, to every member of this House, Hon. Martin I. Townsend, told me—and I will be pardoned for mentioning his name, because I have no doubt he would be quite willing I should use it—"Mr. Cannon, there is nothing whatever in this charge about you not being a citizen. I went to the bottom of that case myself in the Forty-fourth Congress, and if you are not a naturalized citizen, I do not know where to look for one." But at this session my case was referred, and fourteen of a committee composed of fifteen members of the House have decided that I was properly elected. Of that there can be no question, for the governor himself, in my presence, gave to the Clerk of this House last winter his decision upon the election; and in response to my question, in the presence of the then Clerk of the House, "Governor, do you admit that this is your official action?" he replied that it was. In that decision he stated (and it is his duty under the law to declare the result of the election) that I had received 18,568 votes, and my competitor 1,357. This is the decision also of your committee; and further, they decide after thorough discussion and examination that I am a citizen, and, so far as election and citizenship are concerned, am entitled to my seat.

Mr. Speaker, it is now clear, that if I had my rights I should have come here with a certificate from the Territory of Utah, under the seal of the Territory, signed by the governor and countersigned by the secretary of the Territory. That would have been my position if I had not been defrauded of my rights. I say "defrauded;" it is not too strong a term. I was defrauded of my rights and thus prevented from taking my seat on this floor;

and the country has been inundated with falsehood since the election eighteen months ago, to make the public believe that I was not eligible to a seat. I have been held in that position until, within a few weeks, a law of Congress has been passed which now disqualifies me in the opinion of many gentlemen on the other side who previously favored my case, and said that I could not be kept out of my seat on account of any alleged disqualification arising out of my marital relations. I have been held in this position, bound hand and foot, until the passage of this act; and now it is proposed to make this law operative against me to expel me literally from the House, not by a two-thirds vote, but by a majority vote.

If any gentlemen feel that they can vote thus to exclude me and be justified because of the clamor that is raised about Utah, and the people of Utah, and the religion of the people of Utah, I do not envy their feelings, but from the bottom of my heart I pity them. Of course every man must be responsible to himself and his constituency and his God for whatever vote he may cast. I do not question the right of any member to vote as he may deem best. I do not quarrel with any man on that account. His is the responsibility. I do not do so now; but I say it is a great wrong to thus act. Whatever may be said about my constituents or myself does not justify the violation of the Constitution and the laws in my case.

It is conceded by the best lawyers in this House if that recent law had not been passed my case would have been a good one, notwithstanding the report of the Committee on Elections, and I could not have been kept out of my seat by that report nor by any reasoning embodied in it. This is the unanimous opinion of the best lawyers in this House. I had no fears about the subject myself. I was undisturbed as to what the result would be. But when this law was passed I knew it was intended to furnish ground of justification for voting against me for many who were doubtful previously as to what vote they should cast.

Mr. Speaker, if religious prejudice, if religious animosity, if allegations against the people of Utah are to be accepted as the foundations upon which action in my case is to based, then it is clear I am to be excluded, and cannot take my seat. If these are to be accepted as reasons why Utah should not have representation, then certainly all representation will be stricken down on this floor, and the seat of the Delegate from Utah Territory, legally elected under the laws and under the Constitution, will be declared vacant.

But I ask you, gentlemen, all of you who say the people of Utah shall obey the law, will you who say we should comply with the law, religion or no religion, will you set us the example by smiting law down here, in what ought to be the temple of justice? Will you do this? Will you who ask equity from the people of Utah do equity, or will you deny us equity, and say we shall not have it because there are allegations made against Utah Territory; because they are falsely accused of everything that is vile, and charged with being bad men, just as the first Christians were when Nero burned them, made torches of them, and justified himself in doing so—will you, because of the alleged bad character of the people of Utah, be guilty of this great wrong?

I say to you, Mr. Speaker, that before I would be guilty of that, I would want my right hand to lose its cunning and my tongue to cleave to the roof of my mouth—aye! before I would tear out the cornerstone of this grand and glorious temple of liberty which has been reared with so much costly toil and sacrifice, tear out the cornerstone of the right of the people to representation.

That, sir, has been conceded to Utah from the beginning. You now prescribe by law certain disqualifications. This, upon no principle of fairness, can apply to me. It would be an outrage to have it do so. It would be giving legislation a retroactive effect. I am just as eligible to this seat in Congress to-day, as I was the first Monday in December, 1873, when the Forty-third Congress convened in this Hall of Representatives; for this new law does not affect me. I have not exposed myself to its disqualifying clauses. My eligibility has not been interfered with in the least. I have not committed any act which makes me any more unsuitable to that position than I was at that time. And if this idea shall prevail—which is the ground upon which the majority of the committee base their report—that every Congress shall have the right to prescribe new qualifications for Delegates to Congress, imagine the condition of the people of the Territory. They elect a man in good faith, believing they have a right to elect him, and because of some whim or caprice, through some change in popular majorities, when he presents himself, for some reason or other, he is objected to, and is told he cannot have a seat in this House, because in the opinion of the majority he is disqualified.

It may be plural marriage to-day; it may be something else to-morrow, or some offense, real or imaginary, the next day; it may be the Mormon today, the man who believes in marriage, and it may be to-morrow the Shaker, the man who does not believe in marriage. It may be the Catholic next day, and so on, to suit the ever-varying whim of popular caprice, if Congress can prescribe new regulations for Delegates from the Territories. Such will be the inevitable condition if the conclusions adopted by the majority of this committee shall prevail.

It has been stated that I represent a church; that I am the ambassador of a church. Mr. Speaker, I represent the people of Utah Territory. I represent no church, and yet I represent every church that exists in that Territory. I am not here as an ambassador from any church. I am here because the voice of the legally qualified people of Utah Territory have chosen me to represent them here. It has been asserted also that I have no votes outside of the community of which I am a member. I dispute that statement also. It is not true, if the testimony of voters themselves can be believed, for they have stated to me, many of them, that they voted for me.

We have a secret ballot in Utah Territory, and there is no means of knowing the candidates for whom votes are cast. I was voted for, if I may believe what I am told, by many non-Mormons. My last contestant that was in the Forty-fifth Congress received over 4,000 votes. There has been an increase of the non-Mormon element since that time, and as one prominent man from Utah said to me in this city recently, "Mr. Cannon, when we wish to get the seat of the Delegate from Utah, we will send some man here with more votes than 1,357 to get the seat." This was said by a prominent non-Mormon of that Territory, and if the entire vote had been cast in the Territory at the last election, I have no doubt there would be nearly 5,000 in opposition at that time. I am, therefore, a representative of the people of Utah, and if I do not represent them, certainly there is no one to represent them; but I am here because the law of Congress says that Utah Territory is entitled to a Delegate on this floor, and because the law said who should vote for the Delegate, and because the votes were cast for me.

But in regard to licentiousness, concerning which so much has been said, I wish to say a few words. Do gentlemen understand that if the people of my Territory, those who are accused of violating law in having more wives than one—I say do gentlemen, in considering this question, not understand that if licentiousness and lechery were the objects to be accomplished, that the people could reach this in a much cheaper and much more popular manner than by marrying women and sustaining and making legitimate their children? Why it needs no argument upon this point. The mere suggestion brings conviction to the mind of any person who reasons that the methods in vogue elsewhere, and which provoke no wrath, would be much more likely to have been adopted to accomplish such a purpose if that had been the object.

Why should I stand here and be assailed, abused and denounced as I have been for lechery, because of marrying wives? Was it necessary that wives should be taken to gratify sensuality? I have no need to take any wife to accomplish that. I have no need to take to myself the burden and responsibility of a family for that purpose. The people I represent would not need to be kept out of the Union (that being, we are told, the great reason that Utah has not sooner been admitted as one of the States) if the motives which have been attributed to them on this floor were the ones which have prompted them to contract marriages. There would be no necessity to place themselves in such a peculiar position if the gratification of passion were, as alleged, the sole object. What, then, is it?

Mr. Speaker, the people of Utah have profound convictions concerning many things. They have left their homes more than once for the sake of religion, and have been forced to make themselves new homes in a distant land. Marriage is an institution concerning which they have strong convictions. It may be said that this is not religion; but whether it is or not, they believe it to be religion. The Catholic has ideas as to what is religion. The Episcopalian has his ideas also upon the same subject; so with the Presbyterians, the Methodists, the Baptists, the Quakers, the Unitarians, and others; and who shall decide, until the great day when men shall be judged and rewarded or punished for the needs done in the body, between them?

My constituents believe that God has given a command concerning marriage, and that He never gives a command without an object, and that object in this instance is to redeem the human family from the terrible evils under which in modern society it groans. It may be asked, how redeem them? We answer, by making marriage honorable; by uplifting it, by elevating it above its present condition; by giving every woman an opportunity to be a wife and mother. To cut off opportunity for prostitution and concubinage, and to leave no margin for lust to prey upon. It may be said that the sexes are so evenly divided that there is not sufficient disparity between their numbers to justify the adoption of such a principle.

The people of Utah do not believe that plural marriage ought to be or can be universal. In Utah itself it is not possible, for the males outuumber the females. But give every woman the opportunity to marry, punish fornication and adultery, and what woman would occupy an illicit relation with the other sex? The people of Utah believe that at the present time marriage is falling into desuetude, and in consequence corruption is spreading over the land, and we have felt that the country was big enough to allow us in that far-off Utah, not interfering with others, not forcing our views upon others, to test the effect of the patriarchal system of marriage in checking the tide of vice and preventing the spread of evils which modern society acknowledges its powerlessness to extirpate.

I do not think it would be wise, under present circumstances, that I should say anything more on this question. You may depend upon it, however, that there are more arguments in its favor than you have heard here or are likely to hear, and that the men and women choosing to embrace that principle are able to assign good and sufficient reasons for doing so.

I shall not allude to it from a scriptural standpoint. I may say, however, that so far as the condemnation of the world is concerned, we are willing to be placed on the same plane with Abraham. And when we pray to go to Abraham's bosom, we expect he will not look upon us as aliens or lawbreakers; and when we pray to go to the New Jerusalem over each of whose twelve gates is written the name of each one of the twelve patriarchs, the sons of Jacob, we expect when we pass through those gates we shall not be ashamed to be known for what we are.

Since the commencement of this debate, the statement has been made so frequently, that I feel as though I ought to say something in regard to it in connection with this case; I mean the statement respecting the alleged conduct of the people of Utah in absorbing all the public lands. In the first speech on the Utah case, the allegation was made that the people of Utah, in pursuance of a well-defined and settled policy, had absorbed all the public lands. It would seem as though it were unnecessary for any person, and for myself particularly, to say one word in relation to this matter, it being so well known that in Utah Territory, as well as in the other Territories and States over which the land laws have been extended, every person can obtain land that is not occupied, every citizen who has the right to pre-empt or homestead land, and that there is no power in the local legislature to alienate the lands or to take away the title and bestow it upon any individual. Acts of the Legislative Assembly of Utah Territory have been quoted to sustain the idea that they have really given title or sought to dispose of the public lands. At no time and under no circumstances was any action of this kind taken with a view to bestow the ownership or title upon any person who might occupy the land or to whom any grant might be given.

But our cañon roads had to be made, and it required some action on the part of the Legislature to induce men to build costly roads into our mountains and to build bridges over our cañon streams. I have known cañon roads there costing over $12,000 to be swept away in a single storm. Grants of this kind were given in the early days of the Territory for such purposes, and also for herd grounds and for other purposes, that local rights might be preserved. If such had been the design it would have been futile. We lived in Utah Territory for twenty years before the land laws were extended over us; we had to do the best we could. As soon as these laws were extended over our Territory we then obtained title to our lands. These towns which have been spoken of could only get the same amount of land to their population that towns in other parts of the United States obtained. Where the inhabitants number one hundred, the law says, and less than two hundred, sites shall embrace not exceeding three hundred and twenty acres, and so on. The highest number that was allowed was 1,280 acres. That was to a town containing five thousand inhabitants. Now, Salt Lake City had outgrown the conditions for which the townsite act was designed and the inhabitants could not obtain title under it to their homes. My predecessor Hon. W. H. Hooper, succeeded in getting a special act of Congress passed to meet the exigency.

The boundaries of the incorporated cities of Utah Territory were made very extensive. There was a good reason for this. It is to be found in the fact that the settlements of Utah Territory were differently situated from those of every other part of the country. We had to do our farming by means of irrigation. We had to adopt the Mexican system of living in pueblos or villages. And it was thought a wise thing for municipal authority to be extended over the farms, the fields, the water, so that the water could be controlled and come within municipal regulations, and that men who farmed in the country might be within the towns, and have the social advantages, the school advantages and other advantages that were there to be obtained. Besides, it was an Indian country and we had to live in villages to secure protection. But under the old law no man could pre-empt inside of an incorporated city. This was found out after the land laws were extended over the Territory.

It was not supposed, at the time these corporations were granted, that they would thus interfere with the settlement of lands outside of the townsite limits; and it put the Mormon people as much as it did all others to great inconvenience. They could not obtain title to their lands any more than any one else until a law was passed by Congress, which relieved the people in that respect in that Territory and in all the Territories, so that every settler who came within the limits of an incorporated city could obtain his land if it was open to pre-emption or homestead entry. That is all there is connected with this allegation that the people of Utah have plastered the whole country with their incorporations in order to prevent settlement.

Another point, Mr. Speaker, in connection with this case. Let the resolution that has been proposed by the majority of the Committee on Elections be adopted and what will be the result? Nearly eighteen months have elapsed since the election for this Congress. President Hayes was President of the United States at that time. President Garfield succeeded him. President Arthur now fills the executive chair. During these three administrations the governor of Utah Territory, who ruthlessly violated the law and robbed the people of their franchise, still occupies that position.

Let this seat of the Delegate from Utah be declared vacant, and you say to every governor in the United States who acts as a ministerial officer in declaring the results of elections, "You can give certificates to men not elected with impunity if we are in power, as was done in the Utah case, and no one will call you in question." And the returning board which goes to Utah Territory under the law just passed, if not superior men, will feel emboldened to do the same thing with every man who may be elected under that law, and who may be displeasing to a majority of that board. They may assume the same right, and say to the man, "You have received the votes, but we question your right, your eligibility, and we refuse to give you the certificate." Gentlemen, can you see what the effect will be?

You may depend upon it that the consequence of this action, if the report of the majority of the committee be adopted, will not end with Utah Territory. Crystallize this fraud, make it effective by your votes, and the consequences will be far-reaching and extensive. The Delegate-elect from Utah may be an insignificant person, but a great principle is involved in this case. It will not be the Mormons always. There will be someone else, perhaps, who will be unpopular. There will be some party in the minority against whom strong prejudices will be aroused and strong feelings evoked. This case will be cited as a precedent for refusing right and justice to such persons, and it will be pleaded in justification that this Forty-seventh Congress endorsed such action by sustaining the report of the majority of the Committee on Elections. A great wrong of this character cannot be perpetrated even upon the people of Utah without producing terrible results, which will be far-reaching and widespread.

There is one statement which I feel that I ought not to permit to pass unchallenged. It was stated upon this floor by the gentleman from Pennsylvania [Mr. Beltzhoover], and he assigned in as a strong reason for joining in the majority report, that in the Forty-third Congress I had unequivocally denied that I was what I have since acknowledged myself to be. And the gentleman from Tennessee [Mr. Pettibone] made that the foundation for his argument. He read from the statement which I made in the Forty-third Congress, and he certainly has an admirable way of reading anything so as to make it suit the purpose of his own argument. He read:

> I deny that I am now living with four wives.

And then he paused. Well, if that were without qualification it would look as though the gentleman from Pennsylvania was quite correct in saying that I had unequivocally dened the accusation. But there is something else in the sentence. There is a parenthetical sentence—"or that I am living or cohabiting with any wives"—which may be omitted. It will read then in this way:

> I deny that I am now living with four wives in defiance or wilful violation of the laws of Congress, etc.

I denied it then and I can deny it now. I never defiantly or wilfully violated any law. In response to the tenth allegation contained in the statement, I said:

> I deny that I am now living or have ever lived in violation of the laws of God, man, my country, decency, or civilization, or of any law of the United States.

Every lawyer knows that in pleading for the purposes of the action in controversy, allegations are denied and proofs called for, or a defendant might violate the old common law rule that a man is not bound to accuse himself, but to leave the burden of proof to rest upon his opponent. But to show that the members of the committee in the Forty-third Congress understood exactly my position, for I want to make it so clear that it cannot be disputed, that that issue was raised and was accepted, and was recognized as the true issue, I will read from their report. Before doing so I may say that the full committee decided, notwithstanding the accusation that had been made that I was not entitled to my seat because of marital relations, that these relations were not a disqualification for a seat upon this floor, and the majority reported these resolutions:

> 1. *Resolved*, That George R. Maxwell was not elected, and is not entitled, to a seat in the House of Representatives of the Forty-third Congress, as Delegate from the Territory of Utah.
> 2. *Resolved*, That George Q. Cannon was elected and returned as a Delegate from the Territory of Utah to the seat in the Forty-third Congress.

There the majority of the committee stopped. But a minority report of the committee reported the following resolution:

> *Resolved*, That George Q. Cannon was duly elected and returned as Delegate from the Territory of Utah, and is entitled to a seat as a Delegate in the Forty-third Congress.

The issue in controversy, and upon which the contest was based, was brought plainly before the House, and the House, by about a two-thirds vote, adopted the majority report and the supplemental minority report. In the report which was made by the minority of the committee it was stated that:

> The majority of the committee have failed and decline to report a resolution to the effect that George Q. Cannon was not entitled to the seat upon the ground that he was disqualified by reason of the fact that he was the husband of more than one wife, and, as is assumed, is guilty of a violation of the act of Congress, etc.

You will see by this that the issue was fairly brought before the Committee on Elections; it was not only brought fairly before the Committee on Elections, but it was brought fairly before this House. And this House, with the full knowledge of all the facts, thoroughly conversant with the statement made concerning me upon this point, and which I neither disputed nor denied, this House of a republican Congress, by a vote of about two-thirds of the members present, confirmed me in my seat.

In the Forty-fourth Congress the same issue was made and the same resolutions were adopted. The House being pressed for time on account of business, the sub-committee did not report to the House, thinking it unnecessary to do so, as I already had my seat.

[Here the hammer fell.]

THE SPEAKER. The time of the gentleman has expired.

MR. CANNON, of Utah. I would like the indulgence of the House merely to clear up one other point.

There was no objection, and the time of Mr. Cannon, of Utah, was extended.

MR. CANNON, of Utah. After I had been confirmed to my right to a seat in the Forty-third Congress, a resolution was introduced by a member of the Committtee on Elections, making charges against me concerning marriages, and the committee was authorized to investigate the matter. The committee, in submitting their report, made this statement:

> Your committee think the evidence, unchallenged as it is by the Delegate, establishes, etc.

That is, that I was living with more wives than one. The committee then reported a resolution that George Q. Cannon, Delegate from Utah, being found upon due consideration of the evidence submitted and not controverted by said Cannon, to be an actual polygamist, etc.

The committee was authorized to report to the House, but when it did report, the House refused to consider the report, and the case was dismissed.

That was in the republican Forty-third Congress.

Mr. Speaker, I find myself in this position: I am here as the Delegate from Utah Territory, regularly elected, properly qualified, fully entitled to the seat. My constituents, as well as myself, believed at the time of my election that there was no barrier to prevent me from taking my seat. Nothing has occurred since my election to interpose any such barrier. All these charges which are made against my constituency, which I have not time to allude to in detail or to disprove, but which I do state are false, all these charges were in existence years and years ago. They were in existence in the Forty-sixth Congress, in the Forty-fifth, in the Forty-fourth, in the Forty-third Congress. I have sat here during those Congresses. My right to my seat has been fully vindicated by the House. I came here under precisely the same circumstances then that I come now. But it is now said that a law of Congress has been enacted which prevents me from taking my seat; that by the operation of this law I am excluded, and the seat is to be declared vacant. If this proposed resolution be sustained, then I say fraud will be supplemented by this method of strangling, of murdering the representation of Utah Territory on this floor.

If the report of the majority of this committee shall be sustained, I shall leave this Hall of Representatives with a feeling and a conscience which will give me far more satisfaction in the days to come than if I were a member of this House and voted in favor of the adoption of the report of the majority declaring this seat vacant. I am a resident of Utah Territory and one of those people who are everywhere spoken against, and against whom many vile charges are made, as were made against their predecessors, the Church of Christ, in the early days, and as Jesus predicted would be the case; yet I do respect my oath, and I pity any gentleman, who, with nothing to sustain him but popular sentiment, is willing to trample upon the Constitution and the law and to strike down a people against whom popular sentiment is strong.

[Here the hammer fell.]

Mr. Speaker and gentlemen of the House, I thank you for your kind indulgence.